

3 1761 11652940 5



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116529405>

CA24N
L 95
- R 28 c.2

Workers' Compensation
Appeals Tribunal

Tribunal d'appel
des accidents du travail

FIRST REPORT

1985-1986



CARON
L 95
- R28
cp.2

INTRODUCTION BY THE CHAIRMAN

In the writing of this, my first report as Chairman of the Workers' Compensation Appeals Tribunal, my role as trustee of a concept others laboured long and hard to create has been much in my mind. And to those in the worker and employer constituencies, in the ranks of legislators, in government, and at the Workers' Compensation Board, whose project this was long before my appointment, I should like to say here at the outset how much I hope that in this report most of you will find reason to feel that the trust was not misplaced.

The report chronicles an experience, the like of which neither my colleagues nor I ever imagined. It has been incredibly demanding. Also, however, at both personal and professional levels it has been enormously challenging and wholly satisfying. It is an experience none of us would have missed.

It would be naive to think, in the highly charged atmosphere of workers' compensation in Ontario, that a new Appeals Tribunal would be anything but controversial. Frankly, I would be disturbed were we, at this stage, attracting unabashed support from either the worker or employer camps. There is not, I gather, much danger.

It is my belief, however, that, on balance, we have done well. The Tribunal is on its feet, doing, in my opinion, what the legislation requires it to do, and operational at a level that should see the large transitional backlog gone by the end of 1987. I am personally satisfied that, so far, we have met our responsibilities.

The achievement which, to my mind, is evidenced by this report is the achievement of a large number of highly committed and talented Tribunal members and staff. To apportion credit fairly amongst that group is, of course, not possible, and it would be inappropriate in any event in these pages to try. There is, however, one person who must share with the Chairman responsibility for what the Tribunal has done and what it has become. I refer to my Alternate Chairman, James R. Thomas, who has been a partner with me throughout this undertaking.

This report is the Chairman's first report to the Minister of Labour and to the Tribunal's various constituencies. It is more detailed and comprehensive than would be typical of an annual report in usual form. However, I thought it essential at this point in the Tribunal's development to provide the Tribunal's constituencies with a sufficient basis for understanding what the Tribunal looks like, in the flesh, as it were, after twelve months of life, and for assessing the quality and character of its performance to date.

S.R. Ellis
Toronto, Ontario
October 5, 1986

Table of Contents

	Page
A. REPORTING PERIOD	1
B. THE CREATION OF THE TRIBUNAL	1
C. THE IMMEDIATE PAST	1
D. THE MEMBERS OF THE TRIBUNAL	2
E. THE TRIBUNAL'S JURISDICTION AND ITS LIMITS	4
F. THE TRIBUNAL'S ASSIGNMENT	5
G. A MAJOR DIFFERENCE BETWEEN THE APPEALS TRIBUNAL AND THE FORMER APPEAL BOARD	5
H. THE TRIBUNAL'S RELATIONSHIP WITH THE GOVERNMENT	6
I. THE ADJUDICATION PROCESS	6
J. SIX MONTH TURNAROUND GOAL REVISITED	7
K. THE ADVISORY GROUP	7
L. THE TRIPARTITE INFLUENCE	9
M. THE TRIBUNAL'S PERFORMANCE	9
I. Introduction	9
II. Administrative Highlights	10
1. Order-in-Council Appointments	10
2. Staffing	10
3. Premises	10
4. Computer Systems	10
5. Payroll Administration	11
6. Assistance from the Ministry of Labour and the Ministry of Government Services	11
7. The Research and Publications Department	11
a) The Tribunal Library	11
b) Publications	11
c) Research	12
d) Provincial Outreach	12
8. The Tribunal Counsel Office	13
a) The Role Generally	13
b) The In-Hearing Role	13
c) Major Tribunal Litigation	14
9. Intake and Scheduling	14
a) Intake	14
b) Scheduling	14
10. Maintaining Uniform Standards and Consistency in Tribunal Decisions	14
11. Out-of-Toronto Hearings	15
12. Training	15
13. Medical Roster	16
14. Practice and Procedures	16
III. Caseload Performance	17
IV. Pension Appeals Leading Case Strategy	17
V. Substantive Issues	18
1. Introduction	18
2. What is an "Appeal" and What is the Nature of the Tribunal's Adjudicative Role	18
3. Setting the Issue Agenda — The Tribunal's Powers	18
4. Finding Limits to the Requirement that the Board Have Exhausted its Procedures	18
5. Standard of Review	19

	Page
6. Employer Access to WCB Files in the Tribunal's Possession	19
7. Section 21 Applications	19
8. Leaves to Appeal Under Section 86o—Criteria Defined	19
9. Section 15 Applications — A Major Problem	20
10. Non-Organic Chronic Pain	20
11. Fibrositis (Fibromyalgia)	21
12. The Injury is the Accident	21
13. Availability for Work which is Available	22
14. Miscellaneous Substantive Issues	
N. CHALLENGES STILL TO BE MET	23
O. FINANCIAL	24
APPENDICES	25
A (Green) — PART-TIME MEMBERS OF THE TRIBUNAL	A-1
B (Yellow) — TECHNICAL APPENDIX TO DECISION NO. 24	B-1
C (Blue) — CHAIRMAN'S MEMORANDUM TO VICE CHAIRMAN	C-1
D (Orange) — MEDICAL ASSESSOR POLICY	D-1
E (Grey) — EXTRACT FROM TRIBUNAL'S INTERIM REPORT IN THE PENSION APPEALS LEADING CASE	E-1

A. REPORTING PERIOD

The Appeals Tribunal was legislated into existence on October 1, 1985, but it was January, 1986, before it could be said to be operational at any significant level. A few hearings were held in November and December, but until January the main effort was organizational. Because an annual report in traditional format would report as of the end of March, 1986 — the end of the Tribunal's 1985/86 fiscal year — it would in these circumstances cover only the first three months of the Tribunal's effective operating period. A three-month reporting period would not provide meaningful data, and it was the Chairman's view that a report covering that period would not satisfy the pressing interest within the Tribunal's various constituencies for early information adequate for assessing the Tribunal's developing nature and potential.

In response to the foregoing considerations, this First Report has been written covering the twelve months of the Tribunal's existence, from October 1, 1985, to September 30, 1986. It is planned that the Second Report will revert to the standard format and will cover the Tribunal's 1986/87 fiscal year.

B. THE CREATION OF THE TRIBUNAL

The Workers' Compensation Appeals Tribunal is a "tripartite" tribunal with representation from the worker and employer constituencies. It was established in October, 1985, to hear and determine appeals under the Ontario *Workers' Compensation Act*. It is an independent tribunal separate and apart from the Workers' Compensation Board itself. The Appeals Tribunal takes the place of the Workers' Compensation Board's internal Appeal Board as the final level of appeal to which workers and employers may bring disputes about Workers' Compensation Board decisions.

The Tribunal is one part of a package of structural changes introduced in Bill 101. The package included:

- (1) a new Board of Directors for the Workers' Compensation Board with representation from business, workers, the professions and the public;
- (2) a roster of medical practitioners appointed by the Provincial Government to advise the Appeals Tribunal on medical matters;
- (3) an Industrial Disease Standards Panel, representative of the public and the scientific community and also of technical and professional persons, to investigate occupational disease and determine standards for claims; and
- (4) consultative and advisory services for employers and workers to be established by the Ministry of Labour called, respectively, the Office of the Employer Adviser and the Office of the Worker Adviser.

The Bill 101 changes as amended by legislative debate were enacted by Statute of Ontario, 1985, c. 3. A portion of that Act was proclaimed on April 1, 1985, and the balance on October 1, 1985. The amendments creating the Appeals Tribunal were included in the October proclamation.

C. THE IMMEDIATE PAST

Between 1914, when the first workmen's compensation legislation in Ontario was enacted, and 1985, there had been few structural changes in the Ontario compensation system. Beginning in the early 70s the need for structural change was increasingly the subject of public debate and in 1980 Professor Paul C. Weiler was commissioned by the Minister of Labour to undertake a study of the workers' compensation system. Professor Weiler's first report entitled *Reshaping Workers' Compensation for Ontario* was delivered in 1980. With this report as a touchstone, but without fully accepting its recommendations, the Minister of Labour tabled a *White Paper on the Workers' Compensation Act* in June, 1981. In 1982 and 1983, the Ontario Legislature's Standing Committee on Resources Development reviewed the White Paper and considered extensive submissions from employer and worker organizations. The Standing Committee reported in December, 1983. In the meantime, in April, 1983, Professor Weiler submitted his second report entitled *Protecting the Worker from Disability: Challenges for the Eighties*. The Minister of Labour's conclusions concerning the necessary reforms were subsequently presented to the Legislature in the form of Bill 101, and in 1985, after extensive legislative consideration and many adjustments, a Statute was passed incorporating the structural changes previously described.

D. THE MEMBERS OF THE TRIBUNAL

Chairman

S. Ronald Ellis

Mr. Ellis is the Tribunal's first Chairman. He assumed office on October 1, 1985. Mr. Ellis, who trained and practised as an engineer before going to law school, was formerly a partner in the Toronto law firm of Osler, Hoskin & Harcourt. More recently, he was a faculty member at Osgoode Hall Law School where he was Director and then Faculty Director of Parkdale Community Legal Services. He came to the Tribunal from his position as Director of Education and Head of the Bar Admission Course for the Law Society of Upper Canada. In addition, Mr. Ellis has significant experience as a labour arbitrator.

Alternate Chairman

James R. Thomas

Mr. Thomas was appointed to the Tribunal as a Vice-Chairman, effective October 1, 1985, and was assigned by the Chairman to the position of Alternate Chairman. A lawyer with a degree in electrical engineering, Mr. Thomas worked with Canadian General Electric before entering the legal profession. His experience with C.G.E. included six years in managerial positions at one of its manufacturing facilities. He was called to the Bar in 1983. Prior to joining the Tribunal, he had extensive involvement with workers' compensation matters, both through his law practice and his work with community clinics. The position of Alternate Chairman is not one that is defined by the Tribunal's legislation. It is a management position created by the Chairman as a means of sharing the administrative and management load that devolves on the Chairman's Office. The title was chosen to reflect the senior nature of the position and the fact that the incumbent is also the Vice-Chairman appointed by the Chairman — pursuant to provisions in the legislation in that respect — to act in place of the Chairman in the event of the Chairman's absence from the Province or his inability to act. The Alternate Chairman, like the Chairman, has both a management and an adjudicative role.

Full-Time Vice-Chairmen

Laura Bradbury

Ms. Bradbury was appointed to the Tribunal effective October 1, 1985. Called to the Bar in 1979, she acted as counsel for injured workers and, for the two years prior to her appointment, was an investigator with the Office of the Ombudsman.

Nicolette Catton

Ms. Catton was appointed to the Tribunal effective October 1, 1985. A graduate in sociology, she was with the Office of the Ombudsman for nine years prior to her appointment. From 1978 to 1985, she was in charge of the Ombudsman's Workers' Compensation Directorate.

Faye W. McIntosh-Janis

Ms. McIntosh-Janis was appointed to the Tribunal effective May 14, 1986. She was called to the Bar of Ontario in 1978, and was a full-time member of the Research Department at Osler, Hoskin & Harcourt for six years. She comes to the Tribunal from the position of Senior Solicitor with the Ontario Labour Relations Board.

Elaine Newman

Ms. Newman was appointed to the Tribunal effective July 9, 1986. Called to the Bar in 1979, Ms. Newman was previously senior staff lawyer with the Advocacy Resource Centre for the Handicapped in Toronto. She joined the Tribunal originally in October, 1985, in the position of senior lawyer in the Tribunal's Counsel Office.

Kathleen O'Neil

Ms. O'Neil was appointed to the Tribunal effective January 22, 1986. She was a lawyer with the Ontario Nurses' Association, and with the Federation of Women Teachers' Association. Prior to her appointment, she practised with the firm of Symes, Kitley & McIntyre. She has also chaired the Justice Committee of the National Action Committee on the Status of Women.

Antonio Signoroni

Mr. Signoroni was appointed to the Tribunal effective October 1, 1985. A practising lawyer since 1982, Mr. Signoroni had ten years experience as a part-time chairman of the Board of Referees of the Unemployment Insurance Commission. Before entering the legal profession he was involved extensively with service to the Italian community. He was a Trustee on the Metro Separate School Board from 1980 to 1982.

Ian Strachan

Mr. Strachan was appointed to the Tribunal effective October 1, 1985. Called to the Bar in 1971, Mr. Strachan's law practice involved advising small businesses with respect to a variety of commercial matters and employee-related issues. He has also served as a director of the Canadian Organization of Small Business.

Members Representative of Employers and Workers: Full-Time

Robert Apsey

Mr. Apsey was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He held a number of responsible positions at Reed Stenhouse during his 25 years with that firm until his early retirement in 1983, as a Vice-Chairman of the Board and Senior Vice-President.

Brian Cook

Mr. Cook was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. A graduate of the University of Toronto, Mr. Cook was a community legal worker with the Industrial Accident Victims Group of Ontario for five years.

Sam Fox

Mr. Fox was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. A past president of the Labour Council of Metropolitan Toronto, Mr. Fox is a former Co-Director and International Vice-President of Amalgamated Clothing and Textile Workers Union.

Karen Guillemette

Ms. Guillemette was appointed to the Tribunal as a Member representative of employers effective July 2, 1986. Ms. Guillemette has been the Administrator of Occupational Health at Kidd Creek Mines Limited in Timmins, and has been an active member of the Ontario Mining Association. Prior to her position as Administrator, she was the Industrial Nurse at Kidd Creek Mines.

Lorne Heard

Mr. Heard was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. With more than 30 years of experience in workers' compensation matters, Mr. Heard came to the Tribunal from a 13-year career with the United Steelworkers of America where he had national responsibility for occupational health and safety, and workers' compensation.

W. Douglas Jago

Mr. Jago was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. Mr. Jago had been Managing Director of Brantford Mechanical Ltd., and President and principal owner of W.D. Jago Ltd., both mechanical contracting concerns. He was an active member of the Mechanical Contractor's Association.

Frances Lankin

Ms. Lankin was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. For five years prior to her appointment, she was the Research/Education Officer for the Ontario Public Service Employees Union. She was also that union's equal opportunities coordinator.

David Mason

Mr. Mason was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. Mr. Mason came to the Tribunal following a number of years as an industrial relations personnel manager with Rio Algom Ltd.

Nick McCombie

Mr. McCombie was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. His move to the Tribunal followed seven years service as a legal worker at the Injured Workers' Consultants legal clinic in Toronto.

Kenneth Preston

Mr. Preston was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. A graduate chemical engineer, Mr. Preston was Director of Employee Relations for Union Carbide for ten years and Vice-President of Human Resources for Kellogg Salada for three years.

Jacques Seguin

Mr. Seguin was appointed to the Tribunal as a Member representative of employers effective July 1, 1986. Mr. Seguin was Chairman of the Softwood Plywood Division of the Canadian Hardwood Plywood Association C.I.A. and Vice-President of CHPA from 1981 to 1983, and retired from Levesque Plywood Limited as General Manager in 1984.

Note: There are currently six members representative of employers and only five members representative of workers. This imbalance will be corrected in the near future.

Resumes for all part-time Vice-Chairmen and Members may be found in *Appendix A* (Green).

E. THE TRIBUNAL'S JURISDICTION AND ITS LIMITS

The amended *Workers' Compensation Act* mandates the Appeals Tribunal to hear and determine worker or employer appeals from final decisions of the Workers' Compensation Board Appeals Adjudicators (now Hearings Officers) concerning entitlement to benefits, health care and vocational rehabilitation. The mandate also includes hearing and determining employer assessment appeals.

In addition to hearing appeals, the Tribunal has been given jurisdiction over a number of other matters. These include deciding in a particular case whether a worker's right to sue in the Province's civil courts has been taken away by the *Workers' Compensation Act*; determining disputes over employers' access to workers' files, and dealing with workers' objections to medical examinations requested by employers.

Finally, the Tribunal is required to hear and determine applications for leave to appeal which may be brought by workers or employers in respect of old WCB Appeal Board decisions. Leave is to be granted in the circumstances where it can be shown that there is substantial new evidence not previously available or where the Appeals Tribunal is satisfied that there is "good reason to doubt" the correctness of the decision.

Subject to the WCB Board of Directors' right to review interpretations of policy and general law (described below), the Tribunal's decisions are final. They are shielded from court review by the same "privative" clause that has always shielded WCB decisions.

To ensure that the creation of the Tribunal does not diminish the role of the WCB itself in the initial consideration and determination of any issue, the amended Act requires that the Appeals Tribunal not hear, determine or dispose of an appeal unless the procedures established by the Board for consideration of the issues in the appeal have been exhausted and the Board has made a final decision on such issues.

The Act gives the Tribunal essentially the same instructions it gives the Board. These include the instruction to make decisions on cases within its jurisdiction on the real justice and merits of the case and not to consider itself bound to follow strict legal precedent. The Act also gives the Tribunal similar powers of investigation and determination. The Tribunal is, as well, empowered to "make any order or direction that may be made by the Board".

The Tribunal was required at the outset of its existence to decide in the light of those instructions and powers the nature of the "appeal" contemplated by the legislation. Its decision in that respect may be seen in the Technical Appendix to its *Interim Decision No. 24* and reads as follows:

The assumption at the root of the Tribunal's process design is that the "appeal" function contemplated for the Appeals Tribunal by the revised Workers' Compensation Act is not an "appeal" in the traditional sense of the term but is, rather, a process of rehearing. It is a process in which, in reviewing the issues relevant to an appeal, the Tribunal is mandated to consider again the same evidence considered at the final WCB appeal level and to hear new evidence, including, in appropriate cases, evidence obtained by the Appeals Tribunal on its own initiative.

The explanation of that view of the nature of appeals to the Appeals Tribunal is set out at length in the above-mentioned Technical Appendix. That explanation also provides a detailed overall description of the Tribunal's role as perceived by the Tribunal. Interested readers will find a copy of the Technical Appendix in *Appendix B* (Yellow).

Finally, as mentioned above, the Appeals Tribunal's jurisdiction to make final decisions is subject to a right of review by the WCB's new, representative, Board of Directors. The Board of Directors is entitled to review any Appeals Tribunal interpretation of the "policy and general law" of the *Workers' Compensation Act*. Section 86n of the Act is the applicable provision in that respect. The section has not been invoked to date.

F. THE TRIBUNAL'S ASSIGNMENT

In reviewing a WCB decision which is within the Tribunal's jurisdiction, the Tribunal has understood its assignment under the Act to be generally to ask and to answer the following questions:¹

1. Did the Board get the facts right?
2. Did it get the medical facts right?
3. If so, is the Board's conclusion concerning the consequences which follow from those facts based on a correct interpretation of the Act?
4. If the answer to any of these questions is "no", what consequences does the Act specify, given the correct conclusions on the facts?

The decisions appealed from often rely on the terms of written directives and guidelines which the Board provides for the guidance of its staff. These directives and guidelines specify concrete consequences for particular fact situations. Their purpose may be seen to be to provide, for the guidance of Board staff, the Board's interpretation and explanation of what the Act requires and, where the Act leaves to the Board an area of discretion, information as to how the Board wants the discretion exercised.

In cases where the Board decision under appeal is based on a directive or guideline, assuming no disagreement on the factual or medical issues, the ultimate question for the Tribunal remains the same: Does the decision comply with the Act? The Tribunal is not intent on reviewing Board directives or guidelines from a policy perspective but it must, as a threshold matter, satisfy itself that the directive or guideline in question is not incompatible with the requirements of the Act.

G. A MAJOR DIFFERENCE BETWEEN THE APPEALS TRIBUNAL AND THE FORMER APPEAL BOARD

Evaluations of the Appeals Tribunal's performance in its early months of existence tend, naturally enough, to compare its work with that of the Appeal Board which it replaced. Such comparisons often appear, however, not to take account of differences in the respective roles of the two institutions. Of major significance is the inherent difference in their intrinsic approach to questions involving the interpretation of the actual wording of the Statute itself.

It is not, one thinks, widely appreciated that the Appeal Board was not a separate entity within the WCB's own organizational structure. The pre-Bill 101 Act did not specify an "Appeal Board" as such. The words "Appeal Board" did not appear in the Statute. The Act provided that appeals would be heard by the Vice-Chairman of Appeals and Appeals Commissioners — all members of the WCB's governing body. The governing body was composed of Commissioners appointed by the Lieutenant Governor in Council amongst whom were included the Vice-Chairman of Appeals and the Appeals Commissioners. In addition to their responsibilities for sitting on appeals, the Act gave the Vice-Chairman of Appeals and the Appeals Commissioners the same responsibilities as other Commissioners, as members of the Board's governing body, for transaction of the Board's normal business.

In short, the "Appeal Board" was an administrative framework for organizing the processing of appeals. The appeals themselves were, in fact, heard and determined by the governing body of the WCB itself through panels of specially designated Commissioners.

The fact that it was members of the governing body who heard and determined appeals is of particular interest with respect to cases involving issues concerning the meaning of the Act itself. In most cases, there would exist an established WCB view of the meaning of the Act. This view would be found in the Board's written directives and guidelines and, as well, in the unwritten, corporate conventional wisdom that would have evolved over the years. These directives and guidelines would have been approved either directly or indirectly by the Commissioners, and the corporate conventional wisdom concerning the meaning of the Act would, of course, be part of the received wisdom amongst the Commissioners themselves.

In these circumstances, the Appeals Commissioners' sensitivity to interpretation issues would obviously have been influenced generally by an intrinsic, unconscious presumption of validity. The Appeals Commissioners' major focus was on factual and medical issues and on the determination of the outcomes which the Board's established views of the Act should produce. The compatibility of the established Board view of the Act with the wording of the Act was an issue that was not often on their active agenda.

¹ This view of the Tribunal's role has to date been generally applied to entitlement questions. Whether some other standard of review should be applied continues to be debated. See section M., V.5 of this report dealing with Substantive Issues — Standard of Review.

The presence in the former appeals system of that unconscious, intrinsic presumption of validity with respect to the Board's view of the Act, and the absence in Ontario in workers' compensation matters of significant court review of interpretation issues, had the practical consequence of allowing the WCB to pursue its own common-sense view of what the Act meant, free, to a large extent, from effective challenge.

That independence was helpful in making practical sense of a complicated subject. That, presumably, is why it was there. It carried with it, however, the seeds and the appearance of arbitrariness, the eventual rejection of which, at a political level, was largely responsible for the adoption of the external appeals system.

The Appeals Tribunal is required by *its* nature to consider specifically in every case whether the decision under appeal complies with the Statute as actually worded. Elimination of the potential for arbitrariness under the old system has been achieved, therefore, at the cost of increased emphasis on statute wording and on the interpretation of such wording — increased emphasis, that is, on law. The creation of the Appeals Tribunal represented, in effect, a deliberate choice in favour of more law and less discretion.

This should come as no surprise, since it is difficult to imagine how a concern about a potential for arbitrariness could be alleviated in any other fashion. What does not seem to be always appreciated is that this choice inevitably involved some increased complexity in the determination of worker and employer rights.

H. THE TRIBUNAL'S RELATIONSHIP WITH THE GOVERNMENT

By decision of Management Board of Cabinet in November, 1985, the Appeals Tribunal has been categorized under section 25-2-1.6 of the Ontario Manual of Administration as a Schedule 1 (anomalous) Agency. The Tribunal Chairman's reporting relationship with the government is through the Minister of Labour.

Section 86b(3) of the Act empowers the Tribunal Chairman to establish job classifications, personnel qualifications and ranges for remuneration and benefits for officers and employees of the Tribunal and to appoint, promote and employ in accordance with such classifications, qualifications and ranges. It also provides, however, that the Chairman is to do all of that subject to guidelines as may be established by the Management Board. The guidelines that have been applied are those contained in the Ontario Government's Manual of Administration.

The Tribunal's costs are not a charge on the Consolidated Revenue Fund but are paid by the WCB Accident Fund subject to budget approval by the Minister of Labour. The Tribunal's financial performance is subject to audit by the Provincial Auditor.

I. THE ADJUDICATION PROCESS

The Tribunal's adjudication process remains, of course, in an active developmental phase. Adjustments continue to be a weekly experience. However, the basic principles to which the Tribunal has been committed from the outset remain constant. These principles are as follows:

1. The adjudication process must not be adversarial in nature.
2. The hearing environment must reflect respect for the seriousness of the undertaking but not be intimidating to workers or employers.
3. The adjudication process must be *effective* from the parties' perspective. That is, it must permit and facilitate the identification and exploration of issues and the effective challenge or clarification of evidence.
4. The decision-makers must not have private information. What the Hearing Panel receives, the parties must receive.
5. The Hearing Panel in a particular case must be excluded in that case from the Tribunal's pre-hearing investigation and preparation process.
6. The adjudication process must be effective from the decision-makers' point of view. It must produce the evidence and understanding a Hearing Panel needs to make a fair and sensible decision.
7. The process must *be* fair and objective. It must also not give the appearance of being otherwise.

The essential operational features of the adjudication process as it stands at the end of September are:

1. Pre-hearing identification of facts and issues by the Tribunal's counsel and parties through the joint development of a Case Description and a selection of relevant documents from the WCB file.
2. Pre-hearing all-party disclosure of evidence and issues to Tribunal counsel.
3. Any necessary pre-hearing Tribunal instructions to Tribunal counsel given through tripartite Case Direction Panels composed of Tribunal members not involved in hearing the case.

4. Hearing dates established through consultation with the parties. Dates so established subject to a no-adjudgment policy.
5. Hearings featuring cross-questioning of witnesses; flexible and case-responsive in-hearing procedures; participation in some cases by Tribunal counsel; evidence called where necessary on the Tribunal's initiative; minimal rules of evidence, and active participation where necessary by Hearing Panel chairman and members.
6. In some types of appeals or applications, and with the consent of the parties, decisions without a hearing on the basis of documents only.
7. Careful post-hearing consideration of decisions and reasons by the full Hearing Panel. Reconvening of hearings where panels conclude post-hearing that there is a gap in the evidence.
8. In every case, written reasons explaining fully why the Panel came to its decision.
9. Significant decisions published for general public reference (without identification of worker or employer).
10. Where one of the Panel members dissents, he or she gives written reasons for the dissent and these are issued and published along with the majority reasons.

For an extended justification of various aspects of this process, see the Technical Appendix to the Tribunal's Decision No. 24 attached as *Appendix B* (Yellow).

J. SIX MONTH TURNAROUND GOAL REVISITED

In its Workers' Compensation Board Report dated November, 1985, the Standing Committee on Resources Development indicated that it disagreed with the Appeals Tribunal's goal of completing all but exceptional cases within six months of the commencement of the appeal. The Committee recommended that the planned turnaround time be reduced.

After a number of months experience in processing cases, it is apparent that there are some categories of cases — section 21 and section 77 appeals (employer-requested medical examinations and file access) — where it will be possible to complete cases as a rule within one to two months, and others, such as leave to appeal applications, which it should be possible to deal with typically in two to three months.

But the Tribunal — its Chairman and all full-time members — continue to be satisfied that a planned turnaround time for cases involving entitlement or quantum-of-pension issues cannot typically be dealt with appropriately in less than six months.

Without detailing the specifics of a typical schedule, it is apparent that notice of the appeal to the WCB and to parties, pre-hearing preparation and investigation by the parties and by the Tribunal, disposing of objections to file access for the employer, fair advance notice of a hearing to the parties, post-hearing tripartite consideration of the issues and the settling and writing of sensible reasons, cannot all be accomplished properly in less than six months.

Furthermore, six months should not be seen as inappropriate in cases of that kind. Consider that this is the appellant's last chance after an unsuccessful encounter with the expeditious procedures at the Board; that at this stage the evidence on file is inevitably voluminous and complex; that the cases involve workers' or employers' reputations and Accident Fund liabilities typically valued in the tens of thousands of dollars on an individual basis (and often in excess of \$100,000), and that some of these cases will potentially impact on millions of dollars of other similar claims.

With respect to significant cases, the Tribunal is convinced that in the planning of the procedures and process of this Tribunal it would not be appropriate to treat speed of disposition as an overriding consideration.

K. THE ADVISORY GROUP

Since the early planning stages the Tribunal has had the benefit of consultations between the Tribunal Chairman and Alternate Chairman and a group of representatives of worker and employer constituency organizations called the Advisory Group. The Advisory Group came together at the invitation of the Tribunal Chairman and met for the first time in June, 1985. A total of four meetings have been held, and the Group has been consulted by mail on two occasions concerning the development of the Tribunal's Medical Roster.

The Chairman's purpose in organizing the Advisory Group was to provide a forum where information about the planning for the Tribunal could be shared with major players in the various constituencies with a view to keeping the constituencies apprised of the nature of the developing plans and giving them an opportunity to react and advise as the planning progressed.

The forum proved to be very useful from the Tribunal's perspective and the reaction and advice voiced in Group meetings has been influential in respect of many of the choices the Tribunal made as it developed its processes and procedures.

It would be unfair to the members of the Group, however, to suggest that the Group is in any sense responsible for the nature of the Tribunal as it has evolved to date. The Chairman made it clear at the first meeting that he did not propose a decision-making role for the Group and that the Tribunal reserved the right to finally make the decisions that would be required. The Chairman's commitment to the Group was to provide full disclosure and to give careful and open-minded consideration to the views expressed at the Group meetings. And, indeed, it did not always prove possible to respond to the Group's view. The Group will remember — certainly the Chairman will not soon forget — the meetings at which the idea of the Tribunal having its own in-house counsel was roundly rejected by all worker and employer members of the Group — one of the rare instances in the last few years when the worker and employer constituencies had been able to agree on any workers' compensation issue. That meeting provoked a very serious review of the Tribunal counsel idea but in the end the imperatives that emerged in that respect from the perspective of the detailed planning convinced the Chairman and his colleagues that the Tribunal could not in fact be operated without the Tribunal counsel concept. It was implemented with apologies to the Group.

The Group originally consisted of the following organizations and their representatives:

Building and Construction Trades
Council—Provincial
Mr. Joseph Duffy,
Business Manager

Canadian Organization of
Small Business
Mr. Alec Dixon

Council of Ontario Contractors
Association
Mr. Murray Elgie
Mr. Cliff Bulmer

Employers' Council Canadian
Manufacturers' Association
Ms. Kathryn Filsinger

Employers' Council on Workers'
Compensation
Mr. Les Liversidge

Industrial Accident Victims
Group of Ontario
Mr. Brian Cook
Mr. Alec Farquhar

Injured Workers' Consultants
Mr. Nick McCombie

Livingston International Inc.
Mr. Wayne Mahoney

Ministry of Labour
Dr. Alan Wolfson,
Assistant Deputy Minister
Labour Policy & Programs
Mr. Alan Rands,
Office of the Deputy Minister
Mr. Ian Welton,
Policy Branch

Office of the Ombudsman
Ms. Niki Catton

Ontario Federation of Labour
Mr. Cliff Pilkey,
President

Small Business Branch (Advocacy)
Ministry of Industry & Trade
Mr. Jason Mandlowitz

Toronto Building Trades Council
Mr. John Kurchak

Union of Injured Workers
Mr. Philip Biggin
Mr. Harold Giffening
Mr. Constantine Parlanis
Mr. Giuseppe Quatralè

Workers' Compensation Board
Mr. Alan MacDonald,
Vice-Chairman and
General Manager

Many of the individual representatives have, of course, changed over time. And a number of those listed above will be seen now to have different roles in the new structures.

L. THE TRIPARTITE INFLUENCE

Another major difference between the old Appeal Board and the new Appeal Tribunal is the tripartite character of the Tribunal. It is a difference which the Tribunal's public seems sometimes to lose sight of but the tripartite aspect of the Tribunal's design has been of major significance in the Tribunal's development to date.

The Appeals Commissioners at the WCB sat in Panels of three but they were not tripartite Panels. Each commissioner had the same status and took turns chairing the Panels.

The Appeals Tribunal consists of three categories of members:

- a) the Chairman and Vice-Chairmen chosen in part for their capacity for objective and non-partisan judgements, one of whom always chairs the Hearing Panel.
- b) the members representative of workers, nominated by worker organizations and chosen because of an acknowledged worker constituency background and their appreciation of workers' compensation concerns from the workers' perspective.
- c) the members representative of employers, nominated by employer organizations and chosen because of their acknowledged position within the employers' community and their appreciation of workers' compensation concerns from an employers' perspective.

From the beginning it was made clear to all concerned that the Tribunal valued its tripartite character and was intent on taking full advantage of it. The role of the worker and employer members in hearing and deciding cases was defined explicitly to include a recognized role at hearings and Panel-caucuses of keeping one eye on making sure the process was understanding and taking due account of the general issues of special interest to their respective constituencies. The role was also defined, however, to make clear the Tribunal's expectation that at the point of decision, the worker and employer members would each remove his or her partisan hat and apply in good faith his own best judgement as to what was right in the circumstances of each particular case.

It was recognized by all, that if the worker or employer members were to continue to be in fact effective and helpful in the decision-making process, their ultimate conclusions must not be, or be perceived by their colleagues to be, a partisan or politically motivated response.

Members' perception of issues has, of course, been shaped differently as between the worker and employer members — one from experiencing the workplace as a worker and the other from experiencing the workplace as an employer. The open and frank discussion of those different perceptions leads to a more complete Panel-wide understanding of the issues and their implications and thus to a better decision.

The tripartite environment that has developed within the Tribunal has proven positive and constructive. Panel caucuses involve full discussion and careful, open-minded consideration of all views. Often several drafts of a decision will be needed before the discussion has run its course. There is, within the Tribunal, general satisfaction with the effectiveness of the tripartite design in the decision-making process.

Some evidence of that effectiveness may be seen in the fact that in the 251 decisions issued during the reporting period there were only four dissents.

Given the personal qualities and senior career experience of particularly the full-time employer and worker members, the absence of significant numbers of dissents provides some significant evidence of the Tribunal's general objectivity.

It should also be noted that the tripartite influence is not confined to the decisions in individual cases. Through the weekly general Tribunal meetings and through the daily contacts of the close working relationships that have grown up across partisan lines, the tripartite influence is pervasive at all levels of the Tribunal's activities.

M. THE TRIBUNAL'S PERFORMANCE

I. INTRODUCTION

The Appeals Tribunal has been a judicial entity for twelve months, but an operational Tribunal in any meaningful sense only for nine. The reporting period has been one of organization; of process and systems design and deployment; of finding and equipping premises, and of recruiting and training members and staff. It has been a time of discovery concerning the nature of the issues — medical, legal and human — which the Tribunal confronts. The period has been characterized by steady progress punctuated by occasional setbacks and highlighted by moments of surprising achievement. High personal commitment of Tribunal members and staff has been its hallmark.

At the time of reporting, we have arrived at a point where the Tribunal is substantially in place, organized and equipped to provide effective and fair hearings and to deliver well-reasoned decisions, all at a rate sufficient for

the caseload that may be expected. We have only begun to reduce the backlog of cases that resulted from the transition from the Appeal Board to the Appeals Tribunal, but have managed to prevent the backlog from increasing. It is expected that the backlog will be disposed of by the end of the calendar year, 1987.

What follows is a summary of some of the particular highlights of the Tribunal's performance during the twelve months since its creation was proclaimed on October 1, 1985.

II. ADMINISTRATIVE HIGHLIGHTS

1. Order-in-Council Appointments

One of the most important aspects of the Appeals Tribunal is, of course, its roster of Vice-Chairman, Employer Member and Worker Member appointments. The Tribunal and the Government conducted searches and the Chairman or Alternate Chairman interviewed over 100 candidates for full-time and part-time appointments. As may be seen from the previous section on Tribunal Members, the Lieutenant Governor in Council has appointed an outstanding group of individuals in all three categories, both full-time and part-time. To date, there have been a total of 19 full-time and 37 part-time appointments.

2. Staffing

As of the end of the reporting period, the Tribunal's administrative staff complement of permanent employees is 76.

The classification, recruitment, training and deployment of this number of staff was accomplished in the midst of developing from scratch the Tribunal's administrative processes and systems to service an operational process which, itself, was in a state of design and development and constant change. It was also carried on while the physical facilities and equipment were being assembled and organized and while large numbers of files were being actively processed. It was an achievement, in the Tribunal's own view, of not inconsiderable dimension.

The achievement is particularly impressive when one considers the quality of the staff that was assembled. The Tribunal is committed to an institutional environment which is respectful of workers and employers and their rights, and which presents a receptive and friendly face. It is apparent from the informal feedback we have received to date that that particular goal has been largely met. The extra personal commitment of staff through this start-up period in every area of the organization has made it possible for the organization to rise to the many challenges. That commitment also speaks strongly to the success of the staffing enterprise.

3. Premises

The Tribunal began work in October, 1985, in temporary space made available by the WCB at 920 Yonge Street, Toronto. In June, 1986, it moved to permanent quarters at 505 University Avenue, Toronto. These quarters are centrally located a short block north of the Dundas/University subway station, close to bus and train stations. They are, of course, wheelchair accessible.

The public areas are located on the seventh floor and include six hearing rooms of varying sizes and a comfortable reception area. Witness rooms are available to parties for private consultation while waiting for hearings to proceed. The seventh floor also houses the Tribunal's workers' compensation library which is open for use by the public.

4. Computer Systems

The Tribunal is committed in its administration to the effective use of computer technology. It considers computers to be of particular importance to the efficient processing, scheduling and control of its caseload.

The Tribunal's first initiative in this area proved unsuccessful. A computer system based on a centrally operated mini-computer design, was procured, purchased and installed. After a period of about four months of intensive efforts it proved impossible to achieve acceptable operation and the supplier suggested that it withdraw its equipment. The cost to the Tribunal in terms of wasted administrative resources and disruption was serious, but the situation was retrieved without litigation and without disbursement of any part of the agreed purchase price. In retrospect it is apparent that the Chairman's push to have the Tribunal fully operational on an urgent basis was a major factor in this failure.

A replacement system is being developed in conjunction with the Ministry of Labour and Ministry of Government Services. In the meantime, resort has been had to rented, stand-alone microcomputers and the *ad hoc* development of essential individual programs.

5. Payroll Administration

It has proven possible to work out an arrangement whereby the technical administration of the Tribunal payroll is delegated to the Ministry of Government Services (IPPEBS system). This was not a simple matter from a technical point of view. It was complicated by the fact that the source of the Tribunal's payroll funds (as well as other funds) is not the Consolidated Revenue Fund but the WCB Accident Fund, and particularly by the original statutory provision which made Tribunal staff, members of the WCB Superannuation Fund. This latter feature has disappeared with the recent statute amendment making Tribunal staff eligible for the Government of Ontario pension plan.

6. Assistance from the Ministry of Labour and the Ministry of Government Services

The Tribunal has been able to turn to the experienced resources of the Ministry of Labour and the Ministry of Government Services for advice and assistance in a number of areas, most notably: the tendering and contract process in the acquisition of the permanent premises and of major components of furniture and equipment; the layout, design, and construction of permanent space renovations; the specification of the computer systems; budget advice; job classification advice; printing services, and advice concerning government processes generally.

7. The Research and Publications Department

The work of this Department during the reporting period is of particular interest.

a) *The Tribunal Library*

The Tribunal library, part of the Research and Publications Department, is staffed by a librarian and two library technicians, one of whom is bilingual in English and French. The library and most of its services are open to the public from 9 a.m. to 5 p.m., Monday to Friday.

The Library's goals include:

- accessibility to users with various degrees of knowledge about workers' compensation
- service as a "library of record" on workers' compensation issues (bringing together under one roof published and unpublished material which was, up to now, scattered across a variety of medical, legal, and government collections)
- an acquisitions policy which reflects the information required in advocating and adjudicating workers' compensation cases.

In the first months of operation, the major achievements of the library have been to set up a basic collection and to maintain continuous service under difficult physical conditions at the Tribunal's temporary premises and during the move to 505 University Avenue.

The library has developed its collection of 1,200 books, reference works and government documents as well as 75 journal titles in major areas such as compensation law and policy, government, medicine, specific diseases, current technology and occupational health and safety, and labour force issues.

A particularly successful project has been the library's computer index system for medical and legal journal articles, especially those related to industrial disease and disablement in the context of work activities. By the end of August, some 1,000 items will have been indexed or can be retrieved under headings of current interest such as "chronic pain" or "repetitive motion". To make computer searches easier, a subject heading thesaurus is being prepared to allow cross-referencing of terms. Computer access has also been developed and maintained for indexed Tribunal decisions.

The library has avoided duplication of facilities by arranging access to inter-library loan and computer search systems and to material in microfiche catalogue material. Internal services provided to Tribunal staff and members include detailed data base searches, distribution of acquisition lists, and a current awareness service.

Ongoing special projects include the collection of statutory material, legislative debates and government reports on workers' compensation since its introduction to Ontario more than 70 years ago.

b) *Publications*

Prior to the existence of the Tribunal, decisions of the WCB Appeal Board were neither published nor distributed. Essentially, a decision was only available to the worker and employer involved in a given case. The lack of access to decisions meant that workers, employers, and their associations and representatives were often unable to discover the principles which would be applied to a given case. Representatives and

organizations less frequently involved in compensation appeals or in smaller Ontario centres were particularly disadvantaged by the inability to research an issue by reviewing past decisions. And the principle of relative fairness — that like cases should receive like treatment — could not be addressed.

Also, the removal of the final appeal step from within the WCB organization created the need for a method of routine communication between the Appeals Tribunal and the Board as to the reasons for the Tribunal's decisions. If the system is to work as an integrated whole, the Board's primary decision-making process must be responsive to the Tribunal's day-to-day decisions. Because of the principle of the independence of the Tribunal from the Board, these communications must be public. Published written reasons are, therefore, the indispensable means of maintaining the essential Tribunal-Board nexus.

For all of the above reasons the Appeals Tribunal is publishing and indexing its decisions.

The Tribunal provided widespread free public distribution of full-text copies of all of the Tribunal's decisions issued to the end of June, 1986. This was thought necessary because of the obvious significance of each one of the decisions during the initial period of the Tribunal's work and of the particularly pressing interest of the various constituencies in the first few months as to what the new Tribunal was doing.

As of the end of June, the policy for providing ready public access to Tribunal decisions focussed on "selected" decisions and now encompasses the following set of publications:

- Annotated Statute Index
- Decision Digest
- Keyword Index
- Numerical Index
- Workers' Compensation Appeals Tribunal Reporter

All of these are now available, with the exception of the *Workers' Compensation Appeals Tribunal Reporter*. The first volume of the Reporter is due to be published in December.

As of July 1, 1986, individuals or organizations with a particular interest have been able to purchase an annual subscription for a full publication service at a price of \$60. This includes all of the above publications, plus monthly receipt of full-text copies of all significant Tribunal decisions. The Decision Digest, Annotated Statute Index, Keyword Index and Numerical Index are available free and are mailed out as they become available to anyone who has indicated an ongoing interest.

Free copies of all publications are made available to members of the Legislature who request them, to libraries, and to other WCB organizations, etc. The WCB itself, of course, receives copies of *all* decisions.

The Tribunal is experimenting with another type of publication designed as a forum for discussion and debate of workers' compensation matters. It is to be called the *Compensation Appeals Forum*, and the first issue is scheduled for publication in October, 1986. It will contain articles or comments from people external to the Tribunal offering considered criticism of the Tribunal's decisions. It is hoped that these criticisms will prompt responses from the Tribunal's public in future issues, and that the ensuing debate will assist in the long-term development in contentious areas of a good understanding of both the strengths and weaknesses of the *Workers' Compensation Act*, and also in constructive development of the Tribunal's views on particular issues. The idea of the Forum is a response to the frustration that various constituencies expressed in not having adequate opportunities to make submissions in respect of fundamental issues being dealt with in individual cases.

c) *Research*

The Research and Publications Department also provides the Tribunal with in-house research services in both the medical and legal areas and there has been a high level of research activity through the reporting period. Where research product is used by Tribunal counsel in presentations to Hearing Panels in particular cases, it is, of course, also made available to the parties. Post-hearing research may be initiated by a Hearing Panel puzzled over some aspect of a case. Where that research turns up material that raises a crucial issue not on the agenda during the hearing, the parties will be advised and given a further opportunity to make submissions.

d) *Provincial Outreach*

The Appeals Tribunal has attempted to communicate an understanding of its nature and role in the community at large. This attempt has been made through its Outreach Programme, its publications and the person-to-person contacts of its Chairman, Alternate Chairman, Vice-Chairmen, Members and staff at less formal activities such as conferences and meetings.

From December, 1985, to March, 1986, the Appeals Tribunal's Chairman and Alternate Chairman participated in Tribunal-organized Outreach Programmes in London, Sudbury, Thunder Bay, Hamilton, Windsor, Sault Ste. Marie, Ottawa and Timmins. Well over 2,000 people attended these sessions. The Appeals Tribunal has published a pamphlet entitled "How to Appeal to the Workers' Compensation Appeals Tribunal". By the end of July, 1986, eighteen thousand copies of the pamphlet had been distributed to individuals and organizations across the province. Information about the Tribunal and its procedures has also been distributed through its publications, which include a *Newsletter*, distributed to over 1,300 individuals and organizations, and *Practice Directions* as they become available.

8. The Tribunal Counsel Office

a) *The Role Generally*

One aspect of the Tribunal's adjudication process which proved particularly contentious was the concept of the Tribunal utilizing its own in-house counsel. The Tribunal has had occasion to describe the role of the Tribunal's counsel in its *Decision No. 24* and to justify that concept in the Technical Appendix to that decision. The Technical Appendix appears as *Appendix B (Yellow)* to this Report, and the justification for the counsel's role may be seen there. The description as extracted from the body of *Decision No. 24* reads as follows:

The role of . . . Tribunal counsel . . . may be described briefly as follows. They take the WCB file and cull from it what they consider to be the relevant documents. They then prepare a draft "Case Description", setting out the background and undisputed facts and identifying the factual issues and any legal issues. They provide to the parties to the appeal copies of the Case Description and of the documents from the WCB file which they believe should be filed with the Hearing Panel.

The parties to the appeal are invited to advise counsel if there is anything in the Case Description which they think needs to be amended or deleted or if there are any omissions. Any changes that the parties require are then made or disagreements noted. When the Case Description and the list of documents have been settled copies of the Description and documents are then provided to the Hearing Panel.

In the preparation of the Case Description and the selection of relevant documents, etc., Tribunal counsel have no contact with members of the Hearing Panel. They act under general instructions from the Tribunal and where they feel it necessary to get specific instructions concerning any aspect of a particular case they will appear before a separate Panel of the Tribunal called a Case Direction Panel — a tripartite Panel like the Hearing Panel — which will provide them with those instructions. If contentious issues arise during the preparation of a Case Description which cannot be resolved by discussion between the Counsel and the parties, the parties may make representations to the Case Direction Panel and the matter may be resolved at that level.

Ultimately, any unresolvable issues about the relevancy of any document or the identification or definition of issues, etc., will be left to be dealt with by the Hearing Panel at the first hearing.

The Tribunal's instructions to the Tribunal Counsel Office and to the members of the Tribunal concerning contact in any case between the Tribunal's counsel and any member of the Hearing Panel prior to the hearing are explicit. With the exception of the documents delivered to the Hearing Panel in preparation for the hearing — copies of which are also provided to the parties — the Hearing Panel members are to have no prior communication with the Tribunal counsel about any case on which they sit as a member of the Hearing Panel. Any such prior contact disqualifies them from sitting as a member of the Hearing Panel.

b) *The In-Hearing Role*

The role of the Tribunal Counsel at the actual hearing of the case has been defined in internal Tribunal documents in the following terms:

At the hearing of a case, a Tribunal Counsel Office member shall act as counsel to the Tribunal. His or her instructions in that role are to assist the Tribunal from a non-adversarial or partisan perspective in the conduct of hearings and in the clarification and probing of evidence; to present any evidence to be called on the initiative of the Tribunal; to help with the elucidation of the issues and evidence, and to defend the Tribunal's process; all as may be necessary or desirable for an expeditious, fair and effective hearing.

Until the end of March, 1986, Tribunal counsel attended all hearings in their entirety. Since March, Tribunal counsel have continued to appear at the commencement of all hearings to address the Panel concerning the issues involved in the case, but in only a percentage of selected cases (20%) are they participating throughout the hearing.

c) *Major Tribunal Litigation*

The Tribunal Counsel Office is supervised by the Tribunal's General Counsel, whose responsibilities include advising and acting for the Tribunal in any litigation in which it may become involved. To date, the major litigation involving the Tribunal is as follows:

- 1) Application for Judicial Review in which the applicant is alleging bias in the Hearing Panel for having on the eve of the hearing read submissions of Tribunal Counsel on the legal background to the case where the parties did not receive their copies of the submissions in time to file responses prior to the hearing.
- 2) Application for Judicial Review in which the applicant is alleging that the Hearing Panel's refusal to grant an adjournment during the course of the hearing to enable further evidence to be called constituted a denial of natural justice.

The General Counsel has also proven to be a major point of contact between the Tribunal and the community of professional workers' compensation advocates and lawyers.

9. Intake and Scheduling

a) *Intake*

Intake is the point in the Tribunal's process administration at which incoming appeals and applications are received, their category identified and the various appropriate procedures initiated. It is, as might be expected, a point of critical importance to the processing performance of the entire Tribunal. It is at this point that cases are set on the procedural rails appropriate to their nature; where special problems must receive early recognition, and it is here in the contact with the Intake staff that the workers and employers receive their all-important first impression of the Tribunal's institutional character.

The Intake procedures have been the subject of continuous development and adjustment throughout the reporting period and it is expected that the process will continue for some time.

b) *Scheduling*

The scheduling process whereby each month over 200 prepared cases are matched with the availability of each party, of each party's representative, of the Tribunal Counsel and of the three members (full-time or part-time) of an appropriate Hearing Panel, and with the availability of hearing rooms, presents problems common to any court or adjudicative tribunal. It is, also, however, a process that must reflect the special characteristics of the Appeals Tribunal's process and the special needs of its clientele. The development in this area of policies and procedures which are both efficient and appropriate to the Tribunal's work has proven to be particularly difficult and the subject of some contention, particularly between the Tribunal and the representatives of parties appearing before the Tribunal.

Most difficult has been the development of an acceptable policy concerning the establishment and adjournment of hearing dates. The Tribunal started out by selecting dates arbitrarily and, where the representatives or parties were given at least six weeks notice of that date, refusing requests for adjournments except in very unusual circumstances, which did not include the convenience or conflicting schedules of representatives.

The strong negative reaction to this policy from both workers' and employers' representatives, ultimately led to the adoption of a policy of arriving at a mutually acceptable date by consultation between the Tribunal and at least the appellant's or applicant's representative. This change represented, of course, a significant additional administrative burden in the scheduling process, but experience has satisfied us that the previous policy was not practicable. The adjournment policy remains, however, the same.

10. Maintaining Uniform Standards and Consistency in Tribunal Decisions

Up to the end of August, the Tribunal had issued 218 decisions involving a total of nine different Vice-Chairmen and 24 different worker and employer members, both full-time and part-time. Starting in September,

the Tribunal moved into a period when it will be utilizing some 57 part-time or full-time individual adjudicators (vice-chairmen and members) with an eventual target of 215 decisions a month.

The Tribunal's mandate includes the publishing of fully reasoned decisions. For this body of decisions to be useful in contributing to the goals of ensuring that cases decided in the future will receive like treatment to similar cases decided in the past, and in influencing the future decisions of the WCB, the decisions issued by the Tribunal must not only be sensible in their own individual context but must ultimately also make sense when compared one to the other. It is also necessary that Tribunal decisions be uniform in format and that they meet a uniform minimum standard of quality of writing and reasoning. It is also important that there develop a consistent Tribunal approach to such things as the kind of evidence that will be received and the nature of the evidence required to justify various kinds of decisions.

The large number of cases, the large number of individuals necessarily involved in the conduct of the hearings and the writing of the decisions, and the fact that on every issue the Tribunal is starting from scratch, make the accomplishment of these goals inherently difficult.

To deal with the difficulty the Tribunal has adopted a number of strategies:

1. The Tribunal has been actively engaged from its inception in a general Tribunal educational process involving, amongst other things, the identification and discussion at weekly Tribunal meetings of significant issues that may be expected to arise. The purpose of these discussions has not been to arrive at any conclusion on such issues but to develop throughout the Tribunal an awareness of the existence of such issues and an appreciation of their dimension and quality.
2. The role of Tribunal counsel in working with the parties to identify relevant issues prior to the hearing and, in difficult cases, assisting at hearings with the elucidation of issues, ensure that Hearing Panels will be aware of issues likely to be of interest from an overall Tribunal perspective. (The Hearing Panel is, of course, ultimately responsible for determining the issue agenda in any particular case.) The Tribunal counsel's role will also ensure that Hearing Panels (and the parties) will be aware of any particularly relevant, prior Tribunal decisions.
3. The Tribunal attempts through its scheduling processes to ensure that Hearing Panels have at least one full-time member.
4. Training programs are provided to new Tribunal members.
5. At the decision-writing stage, the Chairman has established a procedure where decisions are reviewed by the Chairman's Office in draft form — occasionally by the Chairman himself more often by the Counsel to the Chairman — with a view to bringing to the attention of the Vice-Chairman and Panel any aspects of the draft which present a concern from the point of view of the Tribunal's interest in consistent standards, non-conflicting decisions, etc. It is appreciated that this is a sensitive strategy from an administrative law point of view. The Chairman's Office is careful not to intervene in any manner with respect to any substantive issue of fact or medical fact, and it is made very clear to all concerned, that it is the Hearing Panel that has the final decision on any issue of interpretation as well. The Chairman had occasion, early in the process, to write a memorandum to a Vice-Chairman explaining the nature of the review and its purpose. A copy of that memorandum, amended to ensure the anonymity of the parties may be found in *Appendix C* (blue). It will serve to illustrate the nature of this review process.

It is important in this respect to keep the distinction between the Counsel to the Chairman and the Tribunal's Counsel clear. The Counsel to the Chairman is not involved in the work of the Tribunal Counsel Office — she does not participate in either pre-hearing preparation or the hearing itself. The Tribunal is committed to the principle that a Tribunal counsel who works on the case or appears on behalf of the Tribunal at the hearing, must not have any post-hearing contact with the Hearing Panel except through an exchange of correspondence with copies to the parties. (The need for such latter exchange will arise in cases where the Hearing Panel finds that it needs further evidence or more submissions, etc.)

11. Out-of-Toronto Hearings

Beginning in February, 1986, the Tribunal has been sending Hearing Panels to Timmins, Sudbury, Thunder Bay, Windsor, London and Ottawa. So far, a total of 68 hearings have been held out of Toronto.

The policy that has evolved is one of collecting prepared cases for each out-of-Toronto location and then sending a Hearing Panel to that community for several days to hear a number of cases.

12. Training

In addition to the usual training required and expected in connection with the deployment of new administrative staff, the Tribunal has been concerned to ensure that the Lieutenant-Governor-in-Council appointments — Vice-Chairmen and Members, both full-time and part-time — receive orientation and training

before sitting on cases. This training has involved the preparation and distribution of collections of written materials describing the Tribunal's process and identifying typical issues, etc., formal training sessions of one or two days' duration, and pre-assignment observation of actual hearings by incoming members.

A two-day training session held early in October 1985, also involved Tribunal counsel and representatives from the worker and employer advisers' offices, clinics, consultants and lawyers. This two-day session was focussed on a series of mock hearings and was intended to be both a training session and an exploration of how a tentatively designed adjudication process might work in actual practice. Much was learned from this session and the process was adjusted significantly as a result. Another two-day training session was held in December to deal with the December appointments and a one-day training session was held in July, following the May appointments.

The Tribunal has also adopted the policy of having one full-time member on every Hearing Panel.

13. Medical Roster

The *Workers' Compensation Act* provides for the creation of a roster of medical practitioners, appointed by the Lieutenant Governor in Council, to assist the Appeals Tribunal in cases where the issue under appeal involves a decision of the Board on a medical report or opinion. These practitioners are referred to by the Tribunal as Medical Assessors. The Tribunal found, however, that there was also a need for the Tribunal and Tribunal counsel to have a small group of Tribunal-appointed medical counsellors who could advise in connection with general medical issues, and assist, as well, in the development of the approved roster of medical assessors. A number of senior members of the medical profession have agreed to serve under contract as part-time Appeals Tribunal Medical Counsellors.

Dr. Brian Holmes, former Dean of the University of Toronto Medical School and former Radiologist-in-Chief, Toronto General Hospital, has played a leading role in assisting the Chairman in enlisting the participation of these senior counsellors.

The participation of these medical counsellors in respect of individual cases is confined to pre-hearing consultation. They are not authorized to examine workers or give evidence, nor do they communicate at any time with the members of the Hearing Panel.

The process of developing a list of the medical assessors who will be authorized to examine workers and give reports to Hearing Panels has been a prolonged one. A list of 21 physicians with a variety of different specialties is currently in the process of being considered by the Ministry of Labour for appointment by the Lieutenant Governor in Council.

A copy of the Tribunal's policy in respect of the employment of medical assessors is attached as *Appendix D (Orange)*.

The Appeals Tribunal has also employed a full-time medical liaison officer to co-ordinate its relationship with the medical community and administer the Tribunal's employment of medical counsellors and assessors.

14. Practice and Procedures

The Appeals Tribunal is entitled by statute to establish its own practice and procedure and, of course, the development of appropriate practices and procedures has been a major Tribunal concern since its inception.

Different procedures have evolved for the various matters which are brought to the Tribunal. Those appeals which involve entitlement to compensation or the quantum or duration of benefits are referred directly to the Tribunal Counsel Office for preparation of the Case Description. This document which has been referred to previously is prepared from the contents of the claim file received from the Workers' Compensation Board. It identifies the issues involved in the appeal and provides a history of the claim and how it was treated by the Board. It also provides references to the relevant sections of the legislation, Board policies, and to relevant prior Tribunal decisions. The Case Description with copies of relevant file documents attached is distributed to the parties and the Hearing Panel prior to the hearing and provides the focus for the hearing itself.

Applications dealing with employer access to worker files are determined by a Hearing Panel after receiving the written submissions of the parties.

Applications concerning workers' objections to attending a medical examination by a doctor of the employer's choice are mediated by the Tribunal in an attempt to settle the matter without a hearing. If a settlement cannot be reached, the application is referred to a Hearing Panel.

Applications for leave to appeal from a decision of the Appeal Board of the WCB are considered on the basis of written submissions, or at an oral hearing at the request of the parties. If leave to appeal is granted, a Case Description is prepared by the Tribunal Counsel Office and the appeal is rescheduled for hearing.

A series of Practice Directions have been developed outlining these procedures and these are available from the Appeals Tribunal upon request.

III. CASELOAD PERFORMANCE

In analyzing the so-called backlog of any administrative tribunal, it is necessary to distinguish between the *backlog* and the *workload*. The workload is the work progressing as planned. The backlog is the work not progressing as planned. The *caseload* is the workload plus the backlog.

It is the backlog which represents a tribunal's failure to reach or maintain its production plan.

The Appeals Tribunal's *steady-state* workload goal is to dispose of 150 appeals or applications per month. This is what it now estimates will be required to keep even once the backlog has been disposed of. The Tribunal's plan is to bring all but exceptional cases to a hearing within four months, and to render decisions in such cases within two months. That plan represents a normal workload at any one time of 600 cases in the pre-hearing stage and 300 cases in the post-hearing stage.

As of the end of September the caseload in the pre-hearing stage totalled 1,501 cases and in the post-hearing stage about 310. Thus, judged against the steady-state plan, the backlog at the end of the reporting period is in the order of 900 files.

This is not to say that there are 900 files sitting waiting to be reached. The actual number of files simply waiting for the Tribunal to commence processing them was reduced, as of the date of this report, to about one week's input (30 files). The backlog is to be found in slippage against the ultimate production plan at various stages in the process. This includes 260 pension assessment appeals which are being deliberately held pending a decision in the pension leading case.

The picture may also be assessed from the production side. As of the end of September, the number of appeals or applications received by the Tribunal since its inception on October 1, 1985, totals 2,550. We have held hearings in 650 cases, in 450 of which the hearings have been completed. Final decisions have been issued in 251 cases.

There are, as well, 400 cases which were disposed of without a hearing. These include cases withdrawn, cases where the Tribunal's lack of jurisdiction could be determined without a hearing as well as some cases involving worker objection to employer-arranged medical examinations under section 21 which were settled as a result of Tribunal mediation efforts.

Thus, of the 2,550 cases received, 650 have been dealt with finally — either with or without a hearing — and 310 are awaiting decision after completed hearings. In another 400 cases, the preparation is complete and hearings are or will be scheduled in October and November. The balance are located at various stages of the pre-hearing preparation process.

The Tribunal's plan for overcoming the current backlog of 900 cases is to bring the number of hearings per month up to 215 as of November, 1986, and to hold it there until the backlog is beaten. If the average incoming rate continues at the rate at which it appears to have levelled off — i.e., at about 150 per month — that plan will see the backlog disposed of by the end of 1987. The turnaround time for significant cases will be under seven months by July, 1987.

The reasons for the backlog of cases are numerous and, of course, given that this is a report on the first twelve months of the Tribunal's legal existence (and on the first nine months of any effective operational existence) none of them are very surprising. Predominant is the backlog of 1,100 cases that existed on the Tribunal's first day of existence.¹

It is clear also, however, that the Tribunal's success in not allowing the backlog to increase beyond the October, 1985, level is attributable in important measure to a lower intake rate overall than we had originally anticipated. For example we had planned to receive about 1,000 applications for leave to appeal over the first 18 months — a rate of about 55 per month. Over our first year leave applications have come in at 34 per month (for a total of 400). We had also anticipated a somewhat higher number of appeals from current Hearings Officer decisions.

IV. PENSION APPEALS LEADING CASE STRATEGY

The Tribunal's strategy of utilizing the hearing of a single appeal as a vehicle for an intensive exploration of the special issues and problems faced by the Tribunal in dealing with pension appeals has been the focus of some public attention. The nature of that strategy and the reasons for it were explained at length in the Tribunal's Practice Direction No. 1, dated December, 1985.

Final arguments in the *leading* case will be delivered the week of October 13. (The evidence was completed the week of September 20.) The decisions will be written as quickly as possible but cannot now realistically be expected before January.

¹ The 617 cases actually backed up in the Appeal Board pipeline as of October 1, 1985, and another 496 cases subsequently received involving appeals of WCB Appeals Adjudicator decisions issued before September 1, 1985.

The leading case strategy has delayed 260 individual cases. It has, however, had minimal impact on the Tribunal's total production figures. The cases delayed pending decision in the leading case, were replaced in the Tribunal's production schedule by other kinds of cases which would otherwise not have been reached.

Tying up five full-time Tribunal members for three weeks of extra hearings in September and another week in October will reduce our September/October production figures by 30 to 40 hearings.

The June/July hearings had little impact on overall production because the delay in the appointment of additional part-time vice-chairmen had left full-time side members underemployed during that period.

The hearings held to date have confirmed to the Tribunal's satisfaction that approaching the pension issues in this manner was essential. The education the hearings have provided concerning the nature of the issues in pension assessment appeals has been eye-opening for all concerned. To have treated these cases like others and decided a number last winter on the basis of routine three-hour hearings or the like, would have resulted in decisions that would almost certainly have been wrong or even foolish.

As a result of these extended hearings, knowledge of the Board's policies, practices and procedures in pension assessments has expanded tremendously, as has the understanding of some of the medical issues. The appreciation of the nature of some of the major issues is, as a result, significantly different now than it was.

The hearings have taken much longer than originally planned, but this reflects the limitations in the earlier perception of the problems. The hearings have been packed full of new information and insights and they have progressed as quickly as the nature of the project would permit.

In the Tribunal's view, the strategy has been vindicated. The decision in the case remains, however, as portentous and difficult as ever.

V. SUBSTANTIVE ISSUES

1. Introduction

In the decisions it has made and issued to the end of September, and in the cases in which decisions are in preparation, the Tribunal's Hearing Panels have confronted a large number of difficult issues of first impression concerning the interpretation and application of the *Workers' Compensation Act*. Brief descriptions of the most significant of such issues are presented here for the purpose both of bringing them to the attention of the reader and also of indicating generally the level of intellectual activity that has characterized the Tribunal's work environment during the first twelve months of its life. One of the major surprises for the Chairman and Tribunal members in moving from the stage of speculating about the Tribunal's role to experiencing its reality has been the number and the difficulty of the substantive issues which reality presented.

2. What is an "Appeal" and What is the Nature of Tribunal's Adjudicative Role

At the outset, there was the initial question about what the word "appeal" was intended to mean as it was used by the Act in describing the Tribunal's jurisdiction. This question was resolved in the manner described in the earlier section on the Tribunal's jurisdiction. Coupled with that question, and fundamental to the nature of the adjudication process, was the issue as to the extent to which the Act contemplated an investigative interventionist role for the Tribunal as contrasted with the aloof, purely adjudicative role of a traditional adjudicator. The Tribunal's conclusions on that issue in favour of the interventionist role may be seen in the explanation of the adjudication process set out in the Technical Appendix to Decision No. 24 attached as *Appendix B* (Yellow).

3. Setting the Issue Agenda — The Tribunal's Powers

Acceptance of the interventionist investigative role carried with it, in the Tribunal's view, the necessity for the Tribunal to have the final say as to the agenda of issues to be addressed in any particular case. That view of the Tribunal's powers has proven to be a particularly contentious issue, with many parties resisting the proposition. The nature of the debate and the Tribunal's current position on this question may be seen in the Interim Report issued in the pension assessment leading case, the relevant extract from which is attached as *Appendix E* (Grey).

4. Finding Limits to the Requirement that the Board Have Exhausted its Procedures

The issue-setting question was also tied in with the problem of knowing how to apply the limitation on the Tribunal's jurisdiction set out in section 86g of the Act. As outlined in the earlier section on The Tribunal's jurisdiction, that section of the Act prohibits the Tribunal from deciding issues in respect of which the Board's procedures have not been exhausted. However, interpreted strictly, that section creates a ping-pong effect with workers or employers being sent back to the Compensation Board, back to the Tribunal, back to the

Compensation Board, back to the Tribunal, etc., to no practical purpose. The reading of the section which currently prevails and which was designed to ensure that the Board's experience and expertise were not excluded when there was a significant role for them to play, but that the settlement of workers' or employers' rights were also not delayed unnecessarily, may also be seen in the extract from the interim decision in the leading case strategy set out in *Appendix E* (Grey).

5. Standard of Review

Another threshold issue which the Tribunal's Hearing Panels continue to explore is the standard of review the Tribunal should be applying when it hears appeals from Board decisions of various kinds. Should it be enough, for example, that the Tribunal conclude that the Board's decision was not unreasonable or not obviously wrong or should the Tribunal be concerned simply to ensure that the Board did not take into consideration inappropriate factors? In what circumstances, if at all, did the Act intend the Board to have the so-called "right to be wrong"? What differences in this respect does it make depending on whether the Board was exercising powers expressed in the Act in discretionary terms? Is the proper question for a Hearing Panel of the Tribunal, what *it* would have done in the Board's shoes?

The position on this subject continues to develop as Hearing Panels encounter various categories of Board decisions, but at the moment the Panels are tending to interpret instructions and the powers given to the Tribunal by the Act — instructions and powers which are virtually identical to those given by the Act to the Board itself — as reflecting the intent that Tribunal panels review each of the Board's decisions on the basis of asking themselves the question, "Is this decision *right* in our view?" Certainly, this is the position that has prevailed so far with respect to questions of entitlement.

6. Employer Access to WCB Files in the Tribunal's Possession

An issue that arose immediately when the Tribunal reached the stage of starting to process actual cases was the question of employer access to the worker's WCB file in the Tribunal's possession.

Section 77 of the Act deals at length with the worker's general right to object to an employer having access to the WCB file and with the procedures whereby the Board would decide whether or not access would be granted. By provision in section 77, the Board's decisions in that respect may be appealed to the Appeals Tribunal and the appeals to the Tribunal under that section eventually presented their own particular issues.

At the outset, however, what concerned the Tribunal particularly was how to deal with the question of access to WCB files at the point in time when the file had been transferred from the WCB to the Tribunal following an employer's or worker's appeal of a substantive decision.

If section 77 meant that requests for access to the worker's file for purposes of the Tribunal's proceedings had to be dealt with by referral back to the Board under the terms of section 77, the potential for significant additional delay in the Tribunal's proceedings, for the Tribunal's loss of control over its own proceedings and for the creation of confusion in the minds of workers and employers as to the independent status of the Appeals Tribunal were all serious.

The Tribunal ultimately concluded that section 77 was not intended to apply to access to the file when it had been transferred to the Tribunal's control. It became necessary, then, for the Tribunal to develop its own criteria for granting access consistent with the policy implicit in the section 77 provisions. See Tribunal Practice Note No. 1 for a description of those criteria.

7. Section 21 Applications

Section 21 of the Act deals with the obligation of an employee to submit to a medical examination by a medical practitioner selected by an employer. If the worker objects to such an examination, the section specifies that the objection may be submitted to the Appeals Tribunal for determination. Here, again, the section fails to specify the circumstances in which a worker's objection to attending an employer's medical examination ought to be upheld. It is apparent from the context, however, that the Legislature contemplated *some* grounds that would justify upholding the worker's objection. It was therefore necessary to develop criteria which would apply in determining whether or not the employer's right to have the worker submit to a medical examination would be enforced. See Decision Nos. 174 and 306.

8. Leaves to Appeal Under Section 86o — Criteria Defined

Section 86o extends to anyone with a final decision from the Appeal Board level of the WCB prior to October 1, 1985, the right to apply to the Appeals Tribunal for leave to appeal. It sets out two general conditions either of which must be met for the application to be granted. The development of criteria for determining whether the

stated conditions could be said to have been met in particular cases was the subject of long Hearing Panel discussions and only in the last month or so of the reporting period did those criteria begin to emerge in a concrete form. See Decision Nos. 131 and 64.

9. Section 15 Applications — A Major Problem

With the creation of the Appeals Tribunal, the power under section 15 of the Act to decide whether or not a worker is prohibited by the *Workers' Compensation Act* from pursuing an action for personal injuries in the civil courts of the province was assigned directly to the Tribunal. It had previously been the responsibility of the Workers' Compensation Board's Appeal Board. Sections 8 and 9 of the Act are the operative sections which specify under what circumstances the right of action is taken away. Section 15 is the procedural section providing for application to the Tribunal for decision.

In broad terms, the civil right of action is taken away if Part 1 of the Act would provide workers' compensation benefits, given the circumstances under which the worker's injuries arose. The Act presents numerous serious problems of interpretation in this area but most difficult for the Tribunal — and, in the Chairman's view, for the integrity of the compensation system contemplated by the Act — is the fact that section 15 contemplates the Appeals Tribunal deciding fundamental issues concerning entitlement to benefits under the *Workers' Compensation Act* before the Workers' Compensation Board has had any opportunity to consider them.

Under section 15, panels of the Tribunal have found themselves, for example, being asked in one case to determine whether a particular condition falls within the definition of "industrial disease" under the *Workers' Compensation Act* where the categorization of that condition as an industrial disease has never been considered by the Board; in another case, to decide whether a particular employer fell within the Act's definition of a Schedule 1 employer in circumstances where the particular employer's business activity had not previously been categorized by the Board.

Decisions prohibiting the lawsuit and in favour of entitlement to benefits under the Act would in each case have put the Tribunal in the position of making the primary decision on issues that have traditionally been the business of the Workers' Compensation Board and with which the Appeals Tribunal is not equipped in terms of expertise and resources to deal effectively at the primary decision level. Furthermore, they are the type of decisions which other provisions of the Act, such as section 86g, obviously contemplate should continue to be decided in the first instance by the WCB.

Section 15 also presents a number of other obvious difficulties. One is the real possibility that in an accident situation involving more than one worker, the Appeals Tribunal may find itself considering an issue in an application under section 15 where one of the workers has elected to attempt to pursue a civil action while the same issue is being considered at the same time by the WCB upon application for compensation benefits by another worker.

Also, in every case in which the Appeals Tribunal decides that the Act prevents the civil lawsuit from proceeding, the plaintiff worker may be expected to apply to the Workers' Compensation Board for benefits. At that point the Board, in the exercise of its original jurisdiction to decide entitlement to benefits, is free to decide that the worker is not entitled. In such a case the worker would be left with the lawsuit having been terminated by the Appeals Tribunal, and with no benefits under the Act. The Tribunal would then find itself hearing the worker's appeal from the WCB's decision and having to consider on that appeal the same issue it had already decided in the Section 15 Application, but this time with the additional evidence provided by the Board's involvement.

The Tribunal's Hearing Panels have devoted considerable resources to understanding these difficult problems under section 15 and to the development of an approach that would allow the Tribunal to perform the duties defined for it under the terms of the section, while at the same time finding a way to give practical effect to the Board's initial decision-making prerogatives. See in particular Interim Decision No. 117.

10. Non-Organic Chronic Pain

A category of cases which has caused many of the Tribunal's Hearing Panels particular difficulty is the case which involves disabilities alleged to be caused by what is frequently described in reports and medical literature before the panels as "psychogenic pain magnification". These cases involve workers who many medical specialists seem to be satisfied are in fact disabled by levels of pain which cannot be explained by any discernible organic pathology in circumstances which are said also not to involve any category of psychiatric disorder to which the Board's policy concerning compensation for psychotraumatic disabilities would apply.

There is medical literature which indicates that the magnification is an unconscious or subconscious phenomenon that is outside of the voluntary control of the individual and that the pain is as real and disabling to

the afflicted worker as if it were indeed being generated by an organic lesion. The pain magnification is often said to be “caused” in part by the worker’s *subconscious* interest in “secondary gains” of various kinds such as being relieved from having to return to an unpleasant job, continuing in the invalid role as the focus of the family’s special concern and attention, etc., and by predisposing personality traits, cultural factors, and other similar matters.

Diagnoses of psychogenic pain magnification, sometimes referred to as non-organic chronic pain, typically appear in relation to injuries at work which are not of serious dimension originally. The condition is alleged to prolong a disability far beyond the time in which the original injury ought to have healed and to have the potential for turning a not very serious injury into a permanent disability.

It is apparent, moreover, that we may not be dealing here with isolated cases. Some of the evidence heard by various Tribunal Hearing Panels suggests that without special intervention at a very early stage, some 15% to 20% of all low-back injuries may have this propensity.

One of the major issues concerning entitlement to compensation benefits for disability caused by psychogenic pain magnification beyond the question of whether such disability does really exist, is whether or not it can be considered to be “work related”. The question comes up because of the fact that the condition is often said to be “caused” by or maintained by the influence of the secondary gain factors and other non-work-related matters referred to above, with the injury at work being only the triggering factor. The Act specifies entitlement for disability which “results” from accidental injury at work.

In the reporting period, the issue arose primarily in connection with cases involving claims for temporary disability benefits under section 40 of the Act, but also presented itself in the Tribunal’s leading case on pension appeals. It is expected that substantial expert evidence will be received by the Panel in that case concerning the nature and legitimacy of this phenomenon and its causal connection with the accident.

The position that finally emerges in respect of this type of case will obviously have significant implications both from the workers’ and employers’ points of view.

11. Fibrositis (Fibromyalgia)

The Tribunal had occasion to consider the current medical legitimacy of a disabling muscle pain condition referred to in the medical literature as “fibrositis” or “fibromyalgia”. This is a condition which it is understood the WCB has not, in the past, recognized as being compensable. The reason for that policy was that the diagnosis of fibrositis was widely regarded within the medical profession as an admission by a medical practitioner that the muscle pain being reported could not be attributed to organic problems and was, indeed, at best a form of the psychogenic pain magnification referred to above — that is to say, it was “all in the patient’s head.”

In one very early case a Tribunal Hearing Panel was confronted by evidence submitted on behalf of a worker to the effect that fibrositis was now recognized by the medical profession as an organically-caused disabling condition typically arising from an accidental injury. The Hearing Panel was reluctant on such a major issue to rely solely on medical evidence submitted from the worker’s perspective and arranged to have further expert evidence called. It ultimately heard testimony from eminent specialists in the field of rheumatology and in the study and treatment of pain to the effect that as a result of recent breakthroughs in medical research it is indeed now widely accepted within the medical profession that a condition — “a constellation of symptoms” — known as fibrositis or fibromyalgia does exist. It is a condition which produces disabling muscle pain symptoms caused by organic problems — problems possibly located within the patient’s pain perception systems — which arise from experiencing high stress such as that often associated with an industrial accident.

An interim decision was issued in this case granting entitlement. The written reasons have yet to issue.

12. The Injury is the Accident

Another major issue which the Tribunal has had to consider is the definition of the phrase “injury by accident” as used in the *Workers’ Compensation Act*. Board practice in Ontario has been to require any sudden injury to have been caused by something in the nature of an external chance event which could be identified as an “accident”. Thus, in every such case, entitlement to compensation is predicated on finding some unusual or unexpected movement or occurrence from which the injury could be seen to flow.

The validity of that interpretation of the phrase “injury by accident” was recently challenged when a professional dancer who suffered injury from a burst blood vessel which occurred during the course of a routine dance performance was denied compensation by the Board because, in its view, there had been no *accident*. The dancer applied to the Ontario Divisional Court for judicial review. (The application to the Divisional Court was made before the Appeals Tribunal came into existence.)

The Divisional Court appeared to apply the definition of “injury by accident” approved years ago in English Court of Appeal and House of Lords decisions and subsequently adopted (in 1940) by the Supreme Court of

Canada. That definition holds that the phrase “injury by accident” means “accidental injury” and that any sudden unexpected injury is an accidental injury. The sudden unexpected injury is both an injury and an accident. The Court concluded in the dancer’s case that the bursting of the blood vessel was itself the accident.

An Appeals Tribunal panel subsequently had occasion to consider that definition and to conclude that “injury by accident” in the Ontario *Workers’ Compensation Act* means “accidental injury” and that, accordingly, in the case of any sudden unexpected injury which does arise out of or in the course of employment, the right to compensation does not depend in addition on there being both an injury and an accident. The analysis that led to that conclusion and an assessment of its implications for compensation cases may be seen in the Tribunal’s *Decision No. 72*. The Divisional Court decision on which *Decision No. 72* is based is being appealed by the WCB. The appeal is scheduled to be heard by the Court of Appeal in September. The WCB has applied to the Tribunal to reconsider its *Decision No. 72* for the purpose of directing a stay in its implementation pending the result of the Board’s appeal. A hearing of that application, at which one of the issues will be whether the Board has standing to make an application of this kind, is scheduled for October.

13. Availability for Work which is Available

An issue of some considerable importance which arises in a case now under consideration by a Tribunal Hearing Panel is whether the Board may reduce a worker’s temporary partial benefits because of his refusal to make himself available for suitable work, without first satisfying itself that suitable work is in fact available to the worker.

The issue arises typically in a case where a worker, whom the Board has found to be temporarily partially disabled, continues to assert that he is at least for the time being totally disabled.

A non-working partially disabled worker is entitled to full compensation benefits under section 40 of the Act provided, amongst other things, that he be “available” for suitable work. A worker who declares himself totally disabled is obviously not a worker who is available for any work and such a declaration has always been accepted by the Board as evidence of breach of that condition and, therefore, cause for reducing the worker’s benefit in accordance with the terms of section 40(3) — usually to 50%.

One difficulty with the Board’s position in this respect is that the part of section 40 on which the Board must rely for the authority to reduce the worker’s benefit in these circumstances appears to be open to being interpreted as requiring the Board, before it reduces the benefit, to satisfy itself that there was suitable work which would have been available to the worker had he not made himself unavailable for it. The relevant part of the section reads “. . . available for employment *which is available.*” (Emphasis added).

It is an issue of considerable logistical importance to the Board since the actual availability of work for a partially disabled worker will often be problematic and the means available to the Board for satisfying itself on that issue are not readily apparent.

14. Miscellaneous Substantive Issues

In addition to the particularly prominent issues described above the Tribunal Hearing Panels have had occasion to consider or are in the course of considering a number of other significant issues. These include:

- a) What are the limits to the “arising out of and in the course of employment” concept? This issue has been confronted in cases involving such things as parking-lot injuries, travel-to-work injuries, injuries during personal activities that are indirectly work related, injuries suffered during the personal time of “live-in” employees, amongst others.
- b) What is the nature and the limits of entitlement to compensation for non-work-related sequelae of compensable injuries?
- c) Are disabilities caused by work-place stress compensable under the terms of the Act?
- d) What is the essential difference between a “disablement” as defined in the Act and an “industrial disease”? If, for example, rheumatoid arthritis were found to have been caused or aggravated by continuous intensive exposure to cold drafts, would it be a disablement or an industrial disease?
- e) What constitutes a “disablement” as that term is used in the definition of “accident”?
- f) What is the effect on entitlement to benefits of pre-existing diseases or of pre-existing dispositions which enhance a compensable disability, such as: degenerative disc disease, obesity, alcoholism, personality disorders, etc.?
- g) Are Board doctors or staff subject to being summoned to testify before the Tribunal? If so, under what conditions may they be, should they be, summoned?
- h) To what extent are procedural rulings by Board adjudicators during hearings before them subject to appeal to the Appeals Tribunal?
- i) Are the Board’s policies concerning the disposition of applications for commutation of pensions consistent with the terms of the Act?

N. CHALLENGES STILL TO BE MET

The challenges still to be faced of which the Tribunal is currently aware, include:

1. Demonstrating that the Tribunal is capable of disposing of 215 cases a month. The plan is to achieve this target by November and with the recent additional O.I.C. appointments we are confident that the plan is a reasonable one.
2. Installing a major integrated computer system successfully.
3. Delivering a sound decision in the Pension Appeals Leading Case. The issues in this case are complex, difficult and very significant.
4. Effecting successfully the transition in management terms from the scramble involved in the *construction* activity of these first months of the Tribunal's creation to an efficient, effective and professional operation that will get the job done in a predictable fashion day in and day out.
5. Reducing the time it takes to issue a decision after the hearing is complete.

The time it has taken panels to issue decisions following a hearing has proven surprising to all concerned. Two to three months has been typical and instances of five to six months are not unknown. This is not, we understand, unfavourable compared to other tribunals, but is not what we had expected nor is it acceptable in the longer run.

The issues concerning the meaning of the *Workers' Compensation Act* are proving to be rarely straight forward. Finding acceptable answers to those issues in a tripartite process at this stage of the Tribunal's life when each interpretation has so much significance for other cases, often involved an extended process with many drafts and several meetings. The need to ensure consistency among various decisions emerging at the same time introduces a further complication. As cases repeat themselves, the process will obviously become easier.

The time available during the reporting period for the Vice-Chairmen to draft decisions and to meet with their panels has also been more limited than planned because of the increased hearing load occasioned by the delays in the appointments of part-time Vice-Chairmen.

6. The Tribunal believes that it has a role in training worker and employer representatives in the Tribunal's procedures and process. No progress has so far been made in addressing this role and it is hoped that initiatives in this direction may be possible in the near future.
7. The Tribunal is working towards the goal of being able to provide hearings in the French language. A mock French-language hearing of a typical Tribunal case has demonstrated that there is much to be done in the development of acceptable and uniform French language equivalents for workers' compensation terminology. It was also evident from that experience and from informal discussions with francophone Tribunal members and workers' and employers' representatives, that training in the conduct of a French-language hearing will be necessary not only for Panel members but also for representatives.
8. The Tribunal also has yet to find a French-speaking member representative of workers and that deficiency will of course have to be remedied as soon as possible.
9. The Tribunal's obligation to provide services in the French language is being generally met as far as administrative services are concerned. More attention will be paid to this, however, in the ensuing months.

O. FINANCIAL

FINANCIAL STATEMENT

The Tribunal's Financial Statement for its first fiscal period (October 1, 1985 to March 31, 1986) is as follows:

October 1, 1985 — March 31, 1986

Salaries, Wages & Benefits	\$ 854,082.00
Transportation & Communications	67,257.00
Services	210,695.00
Supplies & Equipment	112,821.00
	<hr/> \$1,244,855.00

NOTE: The costs and expenses associated with the administration of the Appeals Tribunal form part of the administration expenses of the Workers' Compensation Board.

1986/87 BUDGET

The 1986/87 Budget as approved by the Ministry of Labour in May, 1986, totals \$9.8 million of which \$7.6 million is operating expenses and \$2.2 million Capital Costs including furniture and office equipment and a computer system.

It must be noted that the 1986/1987 budget estimates are based on caseload estimates which because of the lack of experience with the new appeals process are, in the nature of things, more speculative than usual. They were also submitted with the acknowledgement of all concerned that the Tribunal's systems and processes are in an experimental stage and that adjustments might prove necessary. To the end of this reporting period the May estimates do appear, however, to be standing up.

It is to be expected that once the backlog and section 860 cases have been disposed of and the cases to be dealt with are reduced to the estimated steady-state level of about 150 per month, the Tribunal's operating expenses will be reduced.

WORKERS' COMPENSATION APPEALS TRIBUNAL

CHAIRMAN'S FIRST REPORT

APPENDIX A

PART-TIME MEMBERS OF THE TRIBUNAL

PART-TIME MEMBERS OF THE TRIBUNAL

Part-Time Vice-Chairmen

Arjun Aggarwal

Dr. Aggarwal was appointed to the Tribunal effective May 14, 1986. He is currently the coordinator of labour management studies at Confederation College in Thunder Bay, Ontario. He has past experience as a labour lawyer, labour consultant, conciliator, fact-finder, referee, and is an approved arbitrator.

Jean-Guy Bigras

Mr. Bigras was appointed to the Tribunal effective May 14, 1986. Mr. Bigras is a bilingual communications specialist, writing reports and speeches for government agencies and private public relations firms. He was formerly the Chief, Creative Services, General Secretariat of the National Capital Commission, and Manager of Information Services of the Export Development Corporation. He spent 10 years with the *North Bay Nugget*, first as a District Editor and finally as City and News Editor.

Ruth Hartman

Ms. Hartman was appointed to the tribunal effective December 11, 1985. She is currently in private practice with an emphasis on administrative appeals to provincial tribunals. She was previously counsel to the Ombudsman for five years.

Joan Lax

Ms. Lax was appointed to the Tribunal effective May 14, 1986. Called to the Bar in 1978, she has practised with the law firm of Weir & Foulds, with emphasis on administrative and civil law. She is currently the Assistant Dean, Faculty of Law, University of Toronto.

John M. Magwood

Appointed to the Tribunal effective December 11, 1985, Mr. Magwood was called to the Bar in 1936 and has been a prominent member of the Ontario Bar for over 40 years. Over the past eight years, he had been the chairman of the Canadian Executive Services Overseas (CESO).

William Marcotte

Mr. Marcotte was appointed to the Tribunal effective May 14, 1986. He is a mediator and is on the list of approved arbitrators with the Ministry of Labour. He teaches collective bargaining processes and educational organizations at the University of Western Ontario.

Eva Marszewski

Ms. Marszewski was appointed to the Tribunal effective May 14, 1986. She was called to the Bar in 1976 and is, at present, in private practice with special emphasis on civil litigation, family law, municipal law and labour law. She is a past member of the Ontario Advisory Council on Women's Issues.

John Paul Moore

Mr. Moore was appointed to the Tribunal effective July 16, 1986. Called to the Bar in 1978, Mr. Moore is currently a staff lawyer with Downtown Legal Services on a part-time basis, dealing with various administrative tribunals.

Marlene Philip

Ms. Philip was appointed to the Tribunal effective May 14, 1986. Ms. Philip, during her first year at the Bar, supervised the immigration section at Parkdale Community Legal Services, and subsequently carried on a private practice for approximately seven years involving immigration law, family law and administrative law. She has left the practice of law and is now a poet, author and freelance writer.

Sophia Sperdakos

Ms. Sperdakos was appointed to the Tribunal effective May 14, 1986. She was called to the Ontario Bar in 1982 and is currently with the law firm of Dunbar, Sachs, Appel. She was a chairperson and caseworker with the Community and Legal Aid Services programme at Osgoode Hall Law School.

Susan Stewart

Ms. Stewart was appointed to the Tribunal effective May 14, 1986. Ms. Stewart articulated with the Ontario Labour Relations Board and was called to the Bar of Ontario in 1980. She has been a lawyer with the Ontario Nurses' Association for approximately four years and has participated in arbitration hearings as an advocate and union nominee.

Paul Torrie

Mr. Torrie was appointed to the Tribunal effective May 14, 1986. He is currently a partner in the law firm of Torrie, Simpson, practising in a wide range of litigation, administrative and corporate law. Mr. Torrie's additional work experience includes community legal work with the Osgoode Hall Community Legal Aid Services programme.

Peter Warrian

Mr. Warrian was appointed to the Tribunal effective May 14, 1986, and has extensive labour relations experience through his involvement with the Ontario Public Service Employees Union. He currently carries on a consulting business with government and union clientele and has written extensively in the labour relations field.

Members Representative of Employers and Workers: Part-Time

Shelley Acheson

Ms. Acheson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. She was the Human Rights Director of the Ontario Federation of Labour from 1975 to 1984.

Dave Beattie

Mr. Beattie was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He has 20 years of WCB experience representing injured workers or disabled firefighters in Appeals Adjudicator and Appeal Board hearings.

Frank Byrnes

Mr. Byrnes was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. He was formerly a police officer and has been a member of the Joint Consultative Committee on Workers' Compensation Board matters.

Herbert Clappison

Mr. Clappison was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. Mr. Clappison retired from Bell Canada in 1982 after 37 years of employment with that company. Upon retirement, he was Director of Labour Relations and Employment.

Claire Comeau

Ms. Comeau was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. She has been involved with WCB claims administration at Falconbridge since 1971. Ms. Comeau retired from service with the Tribunal in July, 1986.

James Connor

Mr. Connor was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He will be retiring at the end of 1986 from a senior personnel relations position with Stelco.

William Correll

Mr. Correll was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. He is retired from Inco, having been an employer representative on the Labour Board and on the Community Colleges Arbitration Board.

George Drennan

Mr. Drennan was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He has been the Grand Lodge Representative for the International Association of Machinists and Aerospace Workers since 1971.

Douglas Felice

Mr. Felice was appointed to the Tribunal as a Member representative of workers effective May 14, 1986, and is currently with the Canadian Paper Workers Union.

Mary Ferrari

Ms. Ferrari was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. Her previous experience includes legal worker with the Industrial Accident Victims Group of Ontario.

Daniel Fryzuk

Mr. Fryzuk was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. He is currently self-employed as a consultant in labour relations, safety, health and accident prevention to employers.

Patti Fuhrman

Ms. Fuhrman was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. She was a caseworker at the Advocacy Resource Centre for the Handicapped and, more recently, was a worker with Employment and Immigration Canada.

Donald Grenville

Mr. Grenville was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has an extensive personnel management background with Texas Gulf Sulphur Canada and more recently, Canada Development Corporation.

Roy Higson

Mr. Higson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He recently retired from the Retail, Wholesale and Department Store Union. He was the international representative of Local 414 for nine years and has 29 years of union experience.

Faith Jackson

Ms. Jackson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. A Nurses' Aide at Guildwood Villa Nursing Home from 1972 to 1985, Ms. Jackson was a member of the Executive Board of the Service Employees International Union (SEIU) for six years.

Donna Jewell

A resident of London, Ms. Jewell was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. She has been the assistant safety director of Ellis-Don Ltd. for approximately seven years. She managed the Ellis-Don WCB claims management and safety programs.

Peter Klym

Mr. Klym was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. He is currently employed with the Communication Workers of Canada.

Teresa Kowalishin

Ms. Kowalishin was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. She has been employed as a lawyer with the City of Toronto since her call to the Bar in 1979.

Allan MacIsaac

Mr. MacIsaac was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He has recently retired from the senior position of business manager and financial secretary, in Iron Workers Local 721.

Martin Meslin

Mr. Meslin was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has over 30 years of experience in running his own business in the printing industry. He was a lay member of the Ontario Legal Aid Plan Appeals Committee.

John Ronson

Mr. Ronson was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has an extensive background in personnel development at Stelco.

Frank Sampson

Mr. Sampson was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. He is currently a workers' compensation officer of the City of Windsor.

E.A. (Ted) Seaborn

Mr. Seaborn was appointed to the Tribunal as a Member representative of employers effective July 1, 1986. His previous experience includes Chairman of the Brampton Planning Board for more than 12 years.

Ken Signoretti

Mr. Signoretti was appointed to the Tribunal as a Member representative of workers effective July 1, 1986, and has served on the Labour Council of Metropolitan Toronto as Vice-President since 1975.

WORKERS' COMPENSATION APPEALS TRIBUNAL

CHAIRMAN'S FIRST REPORT

APPENDIX B

TECHNICAL APPENDIX TO DECISION NO. 24

INTERIM DECISION NO. 24
TECHNICAL APPENDIX
Explanation of the Tribunal's Adjudication Process

The assumption at the root of the Tribunal's process design is that the "appeal" function contemplated for the Appeals Tribunal by the revised Workers' Compensation Act is not an "appeal" in the traditional sense of the term but is, rather, a process of rehearing. It is a process in which, in reviewing the issues relevant to an appeal, the Tribunal is mandated to consider again the same evidence considered at the final WCB appeal level and to hear new evidence, including, in appropriate cases, evidence obtained by the Appeals Tribunal on its own initiative.

This perception of the Appeals Tribunal's role is derived in the first place from the historical tradition in Ontario where each level of the "appeal" processes in workers' compensation matters since the introduction of the Workmen's Compensation system in 1915 has typically been, in whole or in part, a rehearing process. The WCB Appeal Board, which the Appeals Tribunal replaces and whose powers it has largely inherited, dealt with appeals by rehearing cases, with appellants and sometimes respondents typically testifying and/or calling other witnesses, and the Board initiating its own investigations, particularly with respect to medical issues.

The intention of the legislature in this respect may be seen from the fact that the Act's instructions to the Appeals Tribunal concerning the basis of its decisions are identical to the instructions to the Workers' Compensation Board concerning the basis of its decisions. In each case the decisions are to be made "upon the real merits and justice of the case". See Section 86m which makes Section 80 applicable to the Tribunal as well as to the Workers' Compensation Board.

That the Tribunal's role is to rehear cases in the above sense may also be seen from the fact that as part of its adjudicative role the Tribunal has been given explicit investigative and issue-agenda setting functions not usually found in standard adversarial systems of adjudication.

In the revised Act, the investigative function for the Appeals Tribunal is clearest with respect to the medical evidence. Section 86h provides for the appointment by the Lieutenant-Governor-in-Council of a roster of medical practitioners. From that roster of practitioners the Appeals Tribunal "may obtain the assistance of one or more of them in such a way and at such time or times as it thinks fit, so as to better enable it to determine any matter of fact in question in any application, appeal, or proceeding."

In addition to that general mandate, the Act gives the Tribunal the power to authorize the Chairman or a Vice-Chairman to enquire into appeals to decide whether or not the worker involved should submit to a further examination by one or more of the medical practitioners on the appointed roster.

That the investigative function of the Tribunal is intended to extend beyond the medical question is demonstrated, in part, by the fact that the Appeals Tribunal has been given many of the same general investigative powers as the WCB itself. These include the power to enter into any premises where work is being done by a worker to inspect and view any work material, machinery, appliance, or article found there and to interrogate any person.

The Tribunal's instructions to base its decisions upon the real merits and justice of the case also anticipate an investigative and issue-setting function as a necessary adjunct to the Tribunal's hearing and adjudication role.

The need for the Tribunal to have an investigative and issue-setting function as part of its adjudication role also arises implicitly from two of its particular operating circumstances. One of these operating circumstances is the fact that the Tribunal's cases inevitably involve, in one way or another, claims against a "public" fund. The other circumstance is that there are routinely no persons responding to the applications or appeals the Tribunal is called upon to decide.

The unique circumstance of the routine absence in Tribunal proceedings of any respondent to an appellant's or applicant's case, arises because, (1) in the majority of injured workers' appeals the employer does not appear (This is either because he elects not to, or because he has disappeared — gone out of business, become bankrupt, etc.); (2) in all employer assessment appeals there appear to be no natural respondents, and (3) the WCB does not appear in any case to defend its own decisions. The routine absence of respondents is a circumstance which undermines for the Tribunal a number of important assumptions about traditional adjudication processes.

To say that the decisions of the Appeals Tribunal involve claims against a public fund is not, of course, strictly accurate. The Accident Fund is not a public fund in the ordinary sense of the word since only employers contribute to it. It is public, however, in the sense that it is made up of financial contributions imposed by law on a large number of unrelated organizations or individuals. The interest of those various organizations and individuals are at stake in every case heard by the Tribunal, since, ultimately, the volume of claims against the fund determines the amount of contribution for which they will each be assessed. Furthermore, as Professor Weiler has noted in the report which preceded the creation of this Appeals Tribunal, excessive claims against the

accident fund are also contrary to the interest of workers generally and of the public at large. From a long-term perspective, profits diverted from an employer's enterprise to pay unnecessary or excessive compensation assessments either reduce the amount available for wages and benefits or increase the costs of goods and services.

The fact that the interests of employers, of workers in general, and of the public, in ensuring that the accident fund is not unfairly or unnecessarily charged are routinely not represented by any person appearing before the Tribunal, imposes special responsibilities on the Tribunal. And, even in cases where both the worker and employer are represented there is no guarantee that the interests of the fund will be represented. Very often, for example, the employer will only be interested in asserting the right to have the cost of the compensation award transferred in whole or part to the Second Injury Enhancement Fund — a means of sharing the cost implications of the award amongst all members of the fund.

The implications for the Tribunal of the constant presence in the cases which it hears of unrepresented interests may be seen from the following simple illustration.

Consider the common case of a compensation claim that has been refused because the WCB did not believe the injury occurred at work. The worker appeals to the Tribunal and the employer chooses not to contest the appeal. It is not, we think, possible to argue that because the worker's assertions are uncontested, the Tribunal must merely accept them. In analysing the Tribunal's role and determining the appropriate process we have had to recognize that before allowing such an appeal the Tribunal would have an obligation to the public — to the Accident Fund — to satisfy itself that the claim was in fact well founded. That obligation would require the Tribunal to be active in the determination of the issue agenda and in considering and pursuing the need for further investigations.

In the example cited, and potentially in most cases to some degree, the responsibility arising from the presence of unrepresented interests, requires for the Tribunal not only an investigative and issue-setting role during the preparation for the hearing, but also an interventionist role in the conduct of the hearing.

It could be argued that the Workers' Compensation Board ought to appear by counsel and itself defend its decision in each case. If the Board were to appear before the Tribunal to put the case for the "public" interest, the Tribunal could revert to the classic, aloof role of the traditional adjudicator.

The WCB, however, has taken the view that it does not intend to be involved in the defence of its own decisions at the Appeals Tribunal. There are current indications that in special circumstances where the Tribunal is addressing seminal policy or jurisdictional issues the Board may decide to appear in support of particular policies. The Board has also indicated a willingness to provide Tribunal hearings with any information or background that a panel may need in addressing any policy questions in any case. But in the majority of cases, particularly in those in which the appeal will turn on individual factual or medical issues, the WCB does not intend to appear in defence of its decisions. And the Tribunal shares the WCB's view that it would be inappropriate for the Board to appear before the Appeals Tribunal in defence of its own decisions on individual factual or medical issues. Such an appearance would be comparable to a judge appearing before an appeal court to defend his or her own trial decisions.

The Tribunal's investigative and issue-setting functions are also implicitly mandated by the non-adversarial, bureaucratic tradition in the determination of rights in Workers' Compensation matters. In 1915, the subject of compensation for industrial injuries was removed from the adversarial system and from the jurisdiction of the courts and became, in effect, a no-fault insurance scheme. The relationship of the worker to the WCB process became one of insured to insurer rather than one of plaintiff to court. At the Workers' Compensation Board, workers are not expected to define their rights or prove their cases. The workers bring the injury to the Board's attention and the Board identifies and defines the right to compensation and does the investigation necessary to answer the questions which the Board identifies as relevant. Under the Workers' Compensation system rights are not supposed to be dependent on a worker's or employer's own advocacy skills or on access to skilled representatives.

The representation of workers and employers in the Board's processes by representatives or advisers has, of course, in fact emerged — as a matter of common practice — as a means of facilitating the progress of the case through the Board's procedures and increasing the confidence of workers and employers that the Board is in fact hearing and understanding their position. It remains, however, a fundamental feature of the system that representation is not necessary — that the worker's and employer's rights are not being determined in an adversarial process. If that be true of the Workers' Compensation Board's process it must also be true of the Appeals Tribunal's process. The Tribunal is designed to be a component of the same system and must be committed, in this panel's view, to the same theory of adjudication. Thus if a worker presents an appeal on an obviously incomplete case, in our opinion the Appeals Tribunal cannot be in the position of saying, "too bad, if only you had known more about it". The Tribunal must have the power to intervene and deal with the case — as the Act instructs — on its true merits.

In short, the investigative and issue-setting functions of the Appeals Tribunal are an adjunct to its hearing and adjudication role which are explicitly and implicitly mandated by its Act.

In designing a process to accommodate these investigative and issue-setting functions, the Tribunal has been very concerned to ensure that those functions are kept separate from its decision-making role. A decision-making body which has an investigative and issue-setting role is in danger during its investigative or issue-setting activity of developing a bias — a fixed disposition concerning the nature of the case and the desirable outcome. In assessing evidence presented at a hearing or in considering arguments of partisan counsel, it may be unable to effectively shake that bias. Sensitivity of our courts to this particular danger may be seen in the practice that has arisen with respect to pre-trial procedures wherein judges engaged in a pre-trial consideration of cases are precluded from participating in the adjudication of the case.

The employment of Tribunal counsel and the utilization of special case direction panels are designed to allow the Tribunal's investigative, issue-setting functions to be pursued while ensuring the necessary degree of objectivity and detachment on the part of the actual decision-makers.

The Tribunal counsel concept also provides the Tribunal with an appropriate mechanism for culling the WCB files and excluding from the hearing process any documents or materials that are irrelevant or unfairly prejudicial. The Tribunal is committed, as one might expect, to the adjudicative principle that in respect of any issue relevant to his or her concerns, a party to an adjudicative hearing must receive an appropriate opportunity to clarify, test or challenge any information or evidence which the adjudicators receive. Accordingly, interests of efficiency as well of fairness require that Hearing Panels not receive any unnecessary or irrelevant material or information.

The WCB file is a chronological collection of paper generated in the course of a worker's association with the Board. Files a foot thick are not uncommon. The Tribunal's counsel is able to comb through those files and, with the assistance of the parties and their representatives and under the general supervision of case direction panels, to identify that part of the information or material which is, in fact, relevant, and to prevent the Hearing Panel from seeing any irrelevant or unfairly prejudicial material.

Finally, the existence of Tribunal counsel and of case direction panels provides a structure for an appropriate pre-hearing process in which in advance of the hearing the issues can be defined, the areas of agreement as to facts and law settled and the outline and dimensions of the evidence to be called, identified. That is a process which is essential not only to the efficiency of any adjudicative tribunal's operation and of any hearing but also in the long run to the quality of an adjudicative tribunal's decisions. In the circumstances of this Tribunal where there is typically only one party to a proceeding, if there were no one playing the role of Tribunal counsel it is difficult to envisage how that pre-hearing preparation process could be accomplished by this Tribunal without raising concerns of apprehended bias in the Tribunal's decision-making process.

DATED at Toronto this 27th day of March, 1986.

SIGNED: S.R. Ellis, B. Cook, R. Apsey.

WORKERS' COMPENSATION APPEALS TRIBUNAL

CHAIRMAN'S FIRST REPORT

APPENDIX C

CHAIRMAN'S MEMORANDUM TO VICE CHAIRMAN

WORKERS' COMPENSATION APPEALS TRIBUNAL

MEMORANDUM

TO: Vice-Chairman XXX
FROM: S.R. Ellis
RE: XXX—Decision No. XXX

DATE: XX, 1986

I am writing to you concerning your draft decision in the above case.

I appreciate that any communication between the Chairman of the Tribunal to a Vice-Chairman acting in the role of the Chairman of a Hearing Panel concerning the Panel's proposed decision in a particular case, is implicitly a matter of general concern from an administrative law point of view. I have chosen to put these communications in writing rather than talk to you informally in order to provide a record of them and to make them as clear as possible.

Accommodating the independence of Hearing Panels to the Tribunal's commitment to building a coherent and consistent body of decisions which will serve in future as a guide to the like treatment of like cases is an obvious problem when one considers that the Tribunal is faced with a statute which has not previously been interpreted by a judicial or quasi-judicial body which has given reasons for its interpretation of the Act; the Tribunal's adjudication process is novel, and the Tribunal is relying for its decisions on about 22 part-time or full-time Vice-Chairmen, and approximately 40 part-time or full-time members, none of whom have had previous adjudication experience in the compensation field. Maintaining reasonably uniform Tribunal standards of decisions and of the decision-making process under these circumstances is an obvious problem.

The Tribunal is a specialized institution whose decisions are intended to be influential in the development of policy and process in the worker's compensation field. It cannot be viewed as simply an administrator of a large number of independent and unrelated adjudicators.

In these circumstances, it has been my view that the Tribunal Chairman's Office has a duty to review proposed decisions for the purpose of providing individual panels with the following:

1. Information about potential inconsistencies with other Tribunal decisions.
2. Information about compensation law which the Panel has not considered but which is known to the Chairman's Office and which appears to be relevant and which other Panels may have considered or be considering in other issues of a similar nature. In some cases, if this information is especially significant to the decision, it will be appropriate for the Panel to send this information to the parties and to invite further submissions.
3. Identification of apparent problems with the completeness, clarity or logic of reasoning which may be disclosed by reading the proposed decisions.
4. Information and advice about apparent shortcomings in the adjudication procedure or process described or reflected in the proposed decision.
5. Identification of apparent shortcomings in the evidence base for any decision of fact or medical fact, which a reading of the proposed decision may disclose.
6. Instructions concerning the format of the decision.

In this process the Chairman is not, of course, entitled to express to a Vice-Chair or Panel a personal opinion as to what the decision on any substantive issue ought to be. Decisions on substantive issues are the Hearing Panel's to make without interference from anyone.

I hope you will agree that a Chairman's observations within the limits described above are not inappropriate, and that the following observations about the proposed decision are within those limits.

In the first place, I share the concern that the Panel has not had the benefit of any argument in support of the WCB's interpretation of Section XXX.

Given that it could result in a substantial revision of all the . . .

. . . the acknowledgment in your draft that the Panel does not know the reasons for the Board's apparent reading of Section XXX identifies what I think many people would view as a significant deficiency in the information base that reasonably ought to be required for a decision as to the meaning of such a Section.

The failure to acknowledge that there is another way to read the section also, in my view, opens the reasoning to fair criticism. The reading outlined in the memorandum of the Counsel-to-the-Chairman is, arguably, as "clear" a plain-meaning interpretation of the section's wording as the one you have accepted. It would strengthen the decision to acknowledge the other possibility and explain explicitly why it is right to conclude that the Legislature intended whatever interpretation the Panel thinks is right. To base the decision on the conclusion that the plain meaning of the wording is "clear" when it is not obvious that it is, leaves the decision vulnerable.

I would suggest that the WCB be given an opportunity before the decision is finalized to provide the Panel with any information it may have as to what the Board's interpretation generally of Section XXX is and why that interpretation was adopted and any submissions it might like to make as to why that was a proper interpretation of the section.

The worker and the employer *or* their representatives would, of course, have to receive copies of any communication between the Panel, Tribunal counsel and the WCB in this respect and be given such opportunity as either may request to challenge or respond to the WCB's information and submissions.

cc: Counsel to the Chairman.

WORKERS' COMPENSATION APPEALS TRIBUNAL

CHAIRMAN'S FIRST REPORT

APPENDIX D

MEDICAL ASSESSOR POLICY

WORKERS' COMPENSATION APPEALS TRIBUNAL

Policy Concerning the Authorized List of Medical Practitioners

INTRODUCTION

The Workers' Compensation Act was substantially revised in 1985, and one of the major reforms was the creation of an external Appeals Tribunal. The Appeals Tribunal is a new organization that came into existence on October 1, 1985. It is separate from and independent of the WCB. Its role is to hear appeals from decisions of the WCB.

The Appeals Tribunal has been given the power to initiate further medical investigations if it thinks it is necessary in order to determine any medical question at issue on an appeal. Such investigations, including further examination of a worker, may, however, only be referred to qualified medical practitioners on a list of authorized practitioners appointed by the Lieutenant Governor in Council (the provincial Cabinet).

THE APPOINTMENT PROCESS

Under the terms of Section 86h of the Act, appointments to the authorized list can be made only after the views of "representatives of employers, workers and physicians" have been requested and considered.

Medical practitioners identified by the Appeals Tribunal as candidates for appointment to its authorized list will be asked to allow their names to be entered in the appointment process. The names of those who agree to stand for appointment together with their professional resumes will then be circulated to the members of the Tribunal's Advisory Group which is composed of organizations representative of workers and employers. The views of "representatives of physicians" will have been obtained through the offices of the Tribunal's Medical Counsellors prior to a medical practitioner being asked to stand for appointment.

The views obtained from the Advisory Group will be considered by the Tribunal in determining whether or not to proceed to recommend to the Government the appointment of any particular practitioner. The names of practitioners recommended for appointment will be forwarded to the Minister of Labour with resumes and a summary of any views concerning any appointment which have been received from the Advisory Group or from the profession through the Medical Counsellors.

The Tribunal's recommendations will be processed through the government's own appointments process and the government, of course, has the discretion not to accept any particular recommendation.

Appointments will be confirmed by Order-in-Council approved by the Cabinet and will be for a three-year term, subject to renewal.

SERVICES TO BE PROVIDED

Practitioners on the authorized list will be asked to assist the Tribunal in a number of possible ways. Typically, they will be asked to examine a worker, study the medical reports of other practitioners, and give their opinion on some specific medical question. Practitioners specializing in a particular field might be requested to assist in educating the Tribunal or one of its Hearing Panels in a general way about some medical theory or procedure. Or they might be asked for an opinion as to the validity of a particular medical theory which a Hearing Panel has been asked to accept, or to comment on the representative nature, quality or relevancy of a selection of medical literature that the Tribunal may have been asked to consider.

The opinions will normally be sought in the form of written reports containing the history, observations, and test results on which the opinion is based. Copies of the reports will be made available to the worker, employer and the WCB, and references will be typically made to the report in the Tribunal's reasons for its decisions.

It is expected that a written report will normally be sufficient, and attendance at the hearing of the case in question will not be required. On occasion, however, it will be apparent that a Hearing Panel must have the opportunity to question the practitioner for purposes of clarification and explanation of the opinion, if it is to be able to decide the medical issue with confidence. In those cases, the practitioner will be asked to appear at the hearings and give oral evidence. On those occasions, the participating parties, as well as the Hearing Panel, will be given the opportunity to discuss the opinion with the practitioner.

Where the practitioner is asked to attend the hearing, every effort will be made to minimize the inconvenience and the impact of the practitioner's usual schedule. Special compensation for attendance at hearings will take account of the schedule disruption associated with such attendance, the fact that appearances at Appeals Tribunal hearings impose an extra burden on most physicians by reason of their unfamiliarity with the process, and the fact that some preparation time will usually be required. The tariff arrangements that apply generally to the services described in this paper are set out below.

CONFLICT OF INTEREST RULES

Because of the commitment of the Appeals Tribunal to maintaining both the reality and the appearance of independence from the WCB, consideration had been given in the development of this policy to the possible need for imposing on practitioners appointed to the authorized list a restriction against accepting consulting work from the WCB. The practicalities of the situation, however, have convinced the Tribunal that such a restriction would be too costly in terms of the number of experienced practitioners who would be thereby lost to the Tribunal's service. Accordingly, the only restrictions that will apply are those that are specified in the Act itself. The Act provides that *without the written consent of the parties*, practitioners shall not be asked to assist the Tribunal where they or any partner of theirs have, (i) examined the worker whose claim is the subject matter of the application, appeal or proceeding, (ii) treated the worker or a member of the family of the worker, (iii) acted as a consultant in the treatment of the worker or, (iv) acted as a consultant to any employer involved in the application, appeal or proceeding.

Acting as a consultant for the WCB in respect of the claim in question would, of course, also preclude a practitioner from being retained by the Appeals Tribunal to provide assistance in that case.

AMOUNT OF WORK CONTEMPLATED

The appointment to the Appeals Tribunal's authorized list of practitioners would not constitute any guarantee of any referrals. Although it is not the Tribunal's intention to appoint excessive numbers of practitioners, there will be a number appointed in each specialty, and where practicable in each of the Province's major centres. And it is not possible at this stage of its development for the Tribunal to do more than estimate its likely requirements.

Appointed practitioners may be assured, on the other hand, that the Tribunal's demands on their time will not in any event be excessive. The Tribunal would not expect it to amount in any individual practitioner's case to more than two or three referrals a month.

The Tribunal will require assurances from practitioners who allow their names to stand for appointment, that the Tribunal's references will be given special priority in their schedules. The workers the Appeals Tribunal will be dealing with will, in the nature of things, have experienced an already excessively prolonged process since the injury occurred, and the Tribunal is committed to minimizing as much as possible the delays associated with the appeal process.

FEES

The fees paid for the services of practitioners on the authorized list will duplicate the WCB's policies. As of March 31, 1986, we understand that the WCB's Schedule of Benefits for Physicians' Services will be about 132 per cent of the OHIP Schedule (which is slightly ahead of the OMA's 1985 schedule). Future changes in the WCB policy will be tracked by the Tribunal. The Tribunal will also apply the WCB's policies concerning different categories of consultations with adjustments to the consultation fee in the Schedule of Benefits based on whether the consultation can be fairly characterized as "Standard", "Extensive" or "Complex".

For appearances at Tribunal hearings, the Tribunal will pay a range of \$75 to \$150 per hour of preparation time or actual interference with the practitioner's schedule, up to a maximum of \$350 to \$750 per day of hearing, depending on the practitioner's qualifications and the nature of the appearance. Reasonable travelling and accommodation expenses will also be paid. The Tribunal proposes to experiment with telephone attendances and video-taped evidence.

MEDICAL SERVICES LIAISON OFFICER

The Tribunal will employ a Medical Services Liaison Officer who will co-ordinate referrals, expedite reports, arrange for hearing attendances, administer accounts, etc.

WORKERS' COMPENSATION APPEALS TRIBUNAL

CHAIRMAN'S FIRST REPORT

APPENDIX E

EXTRACT FROM TRIBUNAL'S INTERIM REPORT IN THE PENSION APPEALS LEADING CASE

SETTING THE ISSUE AGENDA

1. The submissions at the pre-hearing conference concerning the substantive issues properly before the Hearing Panel in this case raise another threshold question: What determines in a particular case the issues which the Appeals Tribunal must hear and decide and those which it may not? This question has been the focus of much internal attention by this Tribunal since its inception.
2. The submissions by the parties and others on what the issues to be considered in this appeal could or could not be, suggested various theories of issue definition.
3. One such theory is that the issue agenda is entirely in the hands of the parties in the sense that if the parties do not put any particular question in issue, it is not open to the Tribunal to do so.
4. Another theory seems to be that the issues to be considered are limited to those explicitly addressed by the Appeals Adjudicator's decision. On that theory, if the Appeals Adjudicator fails to deal with an issue, the Tribunal is required to ignore it as well, even though it may have been raised explicitly by one of the parties during the Appeals Adjudicator's hearing.
5. Still another proposition is that the Tribunal cannot go beyond the issues explicitly identified and defined by the parties or their representatives during the Appeals Adjudicator proceedings. The employer submitted, for instance, that the fact that the worker's representative had argued before the Appeals Adjudicator that the August, 1983, assessment of 30% for the back and 2% for the thumb was the "correct assessment", prevented the Appeals Tribunal from considering the possibility of a pension entitlement higher than 30% plus 2%. The worker's representative has indicated, however, that in this appeal it is the worker's intention to argue that a 100% pension is appropriate.
6. There are a number of particular factors which must be borne in mind in considering how the issue agenda is to be determined in an appeal to this Tribunal. These include the following:
 - a) The *Workers' Compensation Act* gives to the Appeals Tribunal the same basic instructions it gives to the WCB, viz: to base its decisions "upon the real merits and justice of the case"; not to be bound by "strict legal precedent", and to give "full opportunity for a hearing". (See Sections 86m and 80.)
 - b) The Act also gives to the Tribunal the identical power it gives to the WCB of "determining" a number of specific issues — including the issue of particular interest in this case, viz., "the degree of diminution of earning capacity by reason of any injury". (See the reference in Section 86g(1) to Section 75(2).)
 - c) There is ample judicial authority for the proposition that workers' compensation legislation is to be regarded as remedial legislation and interpreted broadly and non-technically from the point of view of facilitating the expeditious and fair treatment of injured workers' claims.
 - d) The compensation system of claim determination is not an adversarial system. Compensation claims were removed from the adversarial system in 1915 and, since then, it has been a no-fault insurance system where the relationship of a worker to the system is not one of a plaintiff to a court, but one of an insured to an insurer. The insurance scheme analogy can be pushed too far as it does not take account of the rights that have been extended to employers to participate in particular proceedings, but at the very least it is apparent that the rules and traditions of the adversarial system can be at best of only persuasive authority in the development of this Tribunal's process.
 - e) The non-adversarial nature of the system is demonstrated, and the issue-definition process complicated, by the typical presence in compensation proceedings of unrepresented interests. In worker appeals to this Tribunal it is commonplace for employers not to appear at all. Usually they elect not to come, but not infrequently — particularly in the construction industry — they simply do not any longer exist.
 - f) When employers do appear it is often for the purpose, in whole or in part, of achieving a transfer of responsibility for the costs of the claim from themselves to all employers who contribute to the accident fund. This is accomplished through having the cost of the claim, or part of it, charged to the Second Injury Enhancement Fund. The interests of the other employers in such a transfer are never represented. On all appeals by employers of the Board's employer assessment decisions, workers do not appear and the opposing interests of other employers are, again, never represented.
 - g) The WCB itself does not ordinarily appear in defence of its decisions of policies.
 - h) The non-adversarial nature of the system is also evidenced, and the process of issue-definition further complicated, by the nature of the representation of parties who do appear. In compensation systems it is a tradition — and an article of faith — that the process must accommodate the effective participation of workers or employers who are unrepresented or who are represented by non-professional representatives. Professional representation — by worker or employer advisers or consultants, experienced in compensation advocacy — is, of course, increasingly common. But workers regularly appear before this Appeals Tribunal without any representation or represented by a priest, a relative, an alderman, an M.P.P., etc. Employers when they do appear are more often than not represented by staff members such as personnel managers who typically do not have compensation advocacy experience.

- i) Absent from the process of party-determination of issue in appeals to this Tribunal is the discipline imposed in the courts by the concept of costs. In this Panel's view, the Appeals Tribunal's power to award costs is problematic. With the availability of free representation for workers from the Office of the Worker Adviser, legal services clinics, and the Legal Aid Plan, there is virtually no cost exposure to a worker in bringing an appeal, or defining issues. The same is now true with respect to employers represented by the Office of the Employer Adviser.
7. Taking the foregoing factors into account, and for reasons that are set out at greater length in the Technical Appendix to the Tribunal's Interim Decision No. 24, the Appeals Tribunal has concluded that its adjudicative role includes investigative and issue-setting functions that are more intrusive than is usual in traditional adjudicative systems. In particular, it has concluded that it has the jurisdiction and the duty to determine itself the agenda of issues that must be considered in any particular appeal.
8. The Tribunal's power to determine the issues it will consider is, of course, limited by the terms of Section 86g(2). That Section reads as follows:
 - (2) The Appeals Tribunal shall not hear, determine or dispose of an appeal from a decision, order or ruling of the Board unless the procedures established by the Board for consideration of issues respecting the matters mentioned in clause (1)(b) or (c) have been exhausted, and the Board has made a final decision, order or ruling thereon.
9. Section 86g(2) is not without its difficulties in application. Construed strictly, it has the potential for creating a process in which workers and employers would be bounced back and forth between the Tribunal and the Board to no practical purpose. Take, for purposes of illustration, an absurd instance. An Appeals Adjudicator decides that as of — say — January 10, 1984, a worker has recovered from his temporary disability. The Adjudicator confirms discontinuation of compensation on that date. The worker appeals to this Tribunal.
10. The Tribunal's right to hear the appeal under the terms of Section 86g(2) is clear since the Board's procedures for considering the issue of entitlement as of January 10 have been exhausted. However, if the Tribunal allows the appeal, Section 86g(2) could be construed as limiting it to deciding only that on January 10, 1984, the worker continued to be partially disabled — the WCB's procedures for considering the issue of entitlement as of January 11 not having been exhausted. The worker would then have to go back to the Board for a determination of his entitlement in respect of January 11, back to the Tribunal on an appeal, back to the Board re January 12, back to the Tribunal, etc., etc. Obviously, some practical accommodation would emerge in this instance, but the example illuminates a problem with Section 86g(2) that is a real problem with many substantial facets.
11. The general purpose of Section 86g(2) is clear. The legislature obviously wants to ensure that the WCB's special expertise, experience and policy perspective is allowed its usual and proper role before the Appeals Tribunal becomes involved. It is equally clear, however, that the legislature cannot be taken to have intended to require a multiplicity of proceedings to no practical purpose.
12. Having regard to the foregoing factors, in selecting in any particular appeal the issues it will hear and determine the Appeals Tribunal intends to be governed by the following criteria:
 - a) The parties' views as to the issues the Tribunal should address will be given great weight and only for substantial reasons will they not be followed.
 - b) The set of issues that were explicitly *or implicitly* "present" in the adjudicator's decision are the starting point of any issue identification process, and the deletion or addition of issues from that basic set will require substantial reasons.
 - c) In the interest of efficiency and speed, appeals should not be complicated by the Tribunal's addition of issues unless there is a clear necessity.
 - d) The Tribunal's bottom-line question in selecting issues is, What issues is it essential to consider in determining the true merits and justice of this case having proper regard for all competing interests?
 - e) Where an issue arises and it is apparent that the WCB has special expertise, experience, or a policy perspective in respect of that issue, which in the proceedings to date have not had their appropriate play, the Tribunal must refer that issue back to the Board for determination in this usual processes.
 - f) In considering an application of the policy in the preceding paragraph, the Tribunal must also have appropriate regard for the competing policy of not prolonging the WCB-Appeals Tribunal decision-making process to no practical purpose.

Workers' Compensation Appeals Tribunal

505 University Avenue, 7th Floor, Toronto, Ont. M5G 1X4

Telephone: (416) 598-4638

CA20N
L 95
-R 28

Workers' Compensation
Appeals Tribunal

Tribunal d'appel
des accidents du travail

SECOND REPORT

1986-1987



WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

Reprint October 1988
(appendices not reproduced
in colour)

TABLE OF CONTENTS

Page

INTRODUCTION	1
---------------------	---

ACKNOWLEDGEMENTS	1
-------------------------	---

THE CHAIRMAN'S OVERVIEW

1. The Adjudication Process	1
2. The Tripartite Feature	1
3. The Decisions	2
4. The Issue Overload	2
5. The Tribunal's Management and the Pre-Hearing Caseload	4
6. The Post-Hearing Delays	4
7. The Leading Case Strategy on Permanent Pension Appeals	4
8. The Tribunal's Overall Performance	5

THE DETAILED REPORT

A. THE REPORTING PERIOD	6
B. CHANGES IN THE ROSTER OF MEMBERS	6
C. THE RELATIONSHIP WITH THE BOARD	6
1. Introduction	6
2. The Concern is Mutual	7
3. The Tribunal's View of the Relationship	7
4. The Line Between the Board's Business and the Tribunal's Business — Section 86g(2)	8
5. How the Board Sees the Relationship — the Application of 86n	10
6. Who Has the Ultimate Say	12
7. The Tribunal Chairman's Role as Member of the WCB Board of Directors	12
D. THE RELATIONSHIP WITH THE GOVERNMENT	14
E. THE RELATIONSHIP WITH THE OMBUDSMAN	14
F. THE SIX-MONTH TURNAROUND GOAL REVISITED AGAIN	14
G. THE TRIPARTITE FEATURE — A PROBLEM	15
H. OPERATIONAL ASPECTS	16
1. Introduction	16
2. Administrative Highlights	16
(a) The Computer	16
(b) The Committee System	17
(c) Staffing	17
(d) No-Smoking Policy	17

3. The Tribunal Counsel Office	18
(a) The Controversy Recedes	18
(b) Cross-Questioning of Witnesses	18
(c) General Duties	18
(d) The Future	18
4. Case Direction Panels and Instruction Panels	18
5. Outreach and Training	19
6. Scheduling	20
7. Out-of-Toronto Hearings	20
8. Maintaining Uniform Standards and Consistency in Tribunal Decisions	20
9. Medical Evidence	21
(a) Medical Assessors and Medical Counsellors	21
(b) Appointment of Medical Assessor	22
10. Caseload Performance	22
(a) Definition of Terms	22
(b) The Pre-Hearing Stage	22
(c) The Post-Hearing Backlog Problem	23
(d) The Incoming Caseload	25
(e) The Tribunal's Production	26
11. Decision 915	26
12. The Library	26
13. Publications	27
14. French-Language Services/Training	28
15. Representation at Hearings	28
I. THE TRIBUNAL'S RECONSIDERATION POWER — THEORY AND PROCEDURE	28
J. 1986 CHALLENGES REVIEWED	20
K. FINANCIAL STATEMENTS	30

APPENDICES

A. TRIBUNAL MEMBERS (GREEN)	A-1
B. MEMORANDUM OF UNDERSTANDING (YELLOW)	B-1
C. WEEKLY WORKLOAD ANALYSIS FOR WEEK ENDING OCTOBER 2, 1987 (BLUE)	C-1
D. GRAPH OF INPUT AND OUTPUT TRENDS (ORANGE)	D-1
E. INCOMING CASELOAD STATISTICS (GREY)	E-1
F. PRODUCTION STATISTICS (RED)	F-1
G. PROFILE OF REPRESENTATION (PURPLE)	G-1
H. FINANCIAL STATEMENTS (BROWN)	H-1

INTRODUCTION

The Workers' Compensation Appeals Tribunal is a tripartite tribunal established by statute in October 1985, to hear and determine appeals from decisions of the Ontario Workers' Compensation Board. It is an independent tribunal separate and apart from the Board itself. I am its first, and present, Chairman.

This is my second report since assuming the position of Chairman. In it I record the Tribunal's progress in its second year of existence (from October 1, 1986, to September 30, 1987), and report on matters which, in my view, will be of special interest or concern to one or more of the Tribunal's constituencies.

The report is the Chairman's report and not the institution's. By that I mean, particularly, that I have not sought my colleagues' explicit approval for the subjective content of the report. I do believe that the opinions in the report will be found, for the most part, to be generally shared by the members of the Tribunal and where I have particular reason not to be confident on that score I have so indicated. Nevertheless, the views expressed here must not be taken as corporate views.

It will be appreciated from the foregoing observation that this report, like my First Report, is not an "annual report" in the normal institutional tradition of such reports. It serves, in part, as the Tribunal's annual report in the traditional sense as it contains the objective information common to such reports. But it is also the Chairman's personal report to the Minister of Labour and to the Tribunal's various constituencies, mandated, I believe, by the fact that the major responsibility for the creation and operation of the institution is assigned by the legislation to the Chairman personally and not to the Tribunal as such.

ACKNOWLEDGEMENTS

The Tribunal's achievements in its second year are attributable once again to the commitment and talent of the Tribunal's extraordinary collection of members and staff. The consistent quality of the Tribunal's decisions evidence the especially strong contribution of the Tribunal's Vice-Chairs and employer and worker Members. I remain particularly deeply indebted to my Alternate Chairman, James R. Thomas, who continues to be my partner in this enterprise.

THE CHAIRMAN'S OVERVIEW

1. The Adjudication Process

During its second year, the Tribunal has continued to provide an adjudication process that in my opinion is fair, effective and appropriate. The process is sufficiently structured and controlled to permit the serious business typically confronted in Tribunal appeals to be dealt with seriously, and efficiently. It is not, however, dominated by its rules and is not found by most participants to be intimidating. As direct experiences with the Tribunal have deepened and broadened, early fears about legalistic tendencies in the Tribunal's procedures appear to have receded.

2. The Tripartite Feature

My colleagues and I are particularly proud of the Tribunal's success in taking full advantage of its tripartite character and making that aspect of its design a truly viable and valuable feature. One hallmark of this success has been the remarkably high percentage of unanimous decisions. However, because unanimous decisions are an infrequent phenomenon in the labour relations field — the only place where worker and employer communities have previously experienced a tripartite process — the worker and employer communities tend to regard the high

proportion of unanimous Tribunal decisions as evidence of some failure on the part of “their” representatives. This attitude is pressuring worker and employer members towards a more traditional partisan role and thus threatening the true effectiveness of the tripartite concept. It is, in my view, very important that the worker and employer communities come to a more sophisticated understanding of the representative members’ role in the Tribunal’s decision-making process.

This problem is examined at greater length in The Detailed Report which follows this Overview.

3. The Decisions

The Tribunal’s written decisions are clear, intelligible and complete, and the reasoning they contain is generally, in my view, sound. Disapprobation of the Tribunal’s conclusions from one side or another is not uncommon but it is rare for the quality of its reasoning to be challenged.

The body of Tribunal decisions — some 1300 in all as of September 30 — is, for the most part, internally coherent. With the various indices and other research aids the Tribunal provides, the cases are providing effective public access to the workers’ compensation subject, generally, and are a source of authoritative information and direction about the Tribunal’s concerns and interests. For the first time in Ontario, workers and employers and their representatives are being given the means of putting themselves on an even footing with the system’s adjudicators in terms of understanding in the preparation of their cases the true issues.

The publication of the Tribunal’s reasoned decisions is also creating an adjudication environment which promotes like treatment of like cases and allows for inconsistencies between cases to be identified and challenged by both worker and employer representatives and by the Tribunal itself. The process of comparing the decision analysis in one fact situation with that in another is promoting an increasingly more complete understanding of major issues.

It seems likely, as well, that the Tribunal’s decisions are contributing to an enhanced understanding and a more informed and rational discussion of workers’ compensation issues generally, not only within the Tribunal and in the worker and employer communities, but also within government, amongst legislators and at the Board itself. The reasoned nature of the decisions challenges others to respond in kind, and provides concrete, detailed information on which discussion and debate may focus.

4. The Issue Overload

The most significant feature of the Tribunal’s experience during these first two years of its existence has been the pervasive issue overload with which it has had to grapple as a result of its position as a brand new adjudicative tribunal in an operationally mature but jurisprudence-bereft field of law.

The following is a partial list of the seminal issues of first impression which the Tribunal has had to address during this period.

There were — and continue to be — a large number of what might be characterized as threshold issues. For instance, what *is* the nature of an “appeal” as the term is used in the Act with respect to the Appeals Tribunal? What are the limits of the Tribunal’s jurisdiction? (A question that has had to be faced time and time again and continues to be faced as the parade of novel fact situations passes in review.) What powers does the Tribunal have to set the issue agenda in various situations? What should determine what the issue agenda is to be? What is the standard of proof and what does it mean? How does the statutory benefit-of-doubt work? What is the effect of the presumption in section 3(3)? What are the standards of review to be applied to the various categories of Board decisions? What are the limits to the Tribunal’s powers of investigation? What policy should be applied to the question of medical evidence? Is deference, as distinguished from merely respect, owed to the Board medical staff’s opinions — to the Board’s vocational rehabilitation experts’ opinions? What constitutes sufficient medical evidence in various circumstances and when and under what procedure should the Tribunal be obtaining additional evidence? What is the status of Board policies and guidelines? Is the Tribunal authorized — obligated — to review them and, if so, against what criteria? How can the Tribunal’s obligations and powers under section 15 be reconciled with the Board’s privileges and powers? What criteria should govern the Tribunal’s decisions in leave-to-appeal applications? In section 21 Applications? In section 77 Applications?

And then there are the operational issues: What is chronic pain? Does it exist? Is it compensable? What evidence is sufficient to support a chronic pain conclusion? How can a genuine case be distinguished from malingering? What might unreasonable motivation be evidenced by? Are all changes in interpretation retroactive? Fully? Why does the Board not comply with the court-approved definition of injury by accident? Is the Tribunal obligated to challenge that practice? When is an industrial disease not an industrial disease but a disablement? What does the Act mean by disablement? By industrial disease? By “accident”? By “maximal medical rehabilitation”? By “worker”? What does “arising out of employment” or “in the course of employment” mean — at the margins when applied in the infinitely variable fact situations which are found at this, the final stage of appeal? When is a

worker not “available” for employment and when does it matter? What is “suitable” employment? What constitutes a “partial” disability as opposed to a “total” disability? What does section 45(1) mean — really? What is a rating schedule? What does the Act require in the way of a schedule? Does the Board’s Schedule meet the requirements? What is fibrositis or fibromyalgia? Is it an organic or psychological condition? Is it compensable? What is the role of pre-existing conditions? What causes degenerative disc disease — might it be an industrial disease? Can stress-related disabilities be compensable? How are heart attacks at work to be treated? How can section 8 be made sense of? Are executive officers really personally liable for disabilities covered by the Act? Are dependants’ causes of action under the *Family Law Act* caught by the section 8 prohibition against civil litigation? Does section 8 prohibit product-liability civil litigation by workers? Do workers have *rights* to rehabilitation services?

I have gone to this length in describing some of the Tribunal’s issue agenda in an effort to project a concrete impression of the Tribunal’s issue-laden — issue-drenched — work environment. And yet the list represents only a portion of the parade of issues to be found in the decisions the Tribunal has issued to date and in the decisions which it is currently contemplating.

Nor did the issues present themselves in an orderly, well-defined fashion, or come forward at a convenient rate. “Parade” is not the right metaphor. An “infestation” of issues captures the experience better. The Tribunal found one thousand cases waiting for it when it arrived on the scene, and every case was dripping with issues of first impression. Furthermore, the Tribunal was forced to approach these issues from scratch in a virtual vacuum of helpful precedent. It was not engaged in incremental adjustments to a mature body of law which is the normal lot of adjudicators in the common-law system. Rather than pruning a garden, Tribunal Members found themselves hacking paths and clearings in an uncharted forest. Often, recognizing the existence of an issue and defining its nature was as difficult as resolving it.

The difficulty of the experience was exacerbated by the fact that, to a large extent, the Tribunal was on its own in this endeavour. Just as there was no extant body of law — no record of the Board’s views on any issue — so there was no community of advocates experienced in dealing with the issues with which the Tribunal found itself confronted, and, as we have said, in many cases no advocates at all from one perspective or another. The advocate communities were experienced with the Board’s application of the Act and with advocacy on the factual and medical issues in individual cases. But with respect to the multitude of subjects which the creation of the Tribunal put on the system’s adjudication agenda for the first time, and the large number of Tribunal-related issues which the Tribunal’s appearance had spawned, the advocate communities, like the Tribunal, were starting from scratch with nothing to work with.

Furthermore, because of the relatively infrequent involvement of experienced advocates in the Tribunal’s processes during this pioneering period — as contrasted to the Tribunal’s constant involvement — the Tribunal has found itself having to be out in front of the advocacy communities on most issues.

As was to be expected, particularly in a tripartite system, the process of issue identification and resolution in these circumstances has been a Tribunal pre-occupation which has consumed massive amounts of time and intellectual energy. It is a process which is particularly complicated by the fact that each new issue always arises in several cases at the same time. This circumstance has led to substantial inter-panel discussions and debate, and postponement of individual decisions while Tribunal consensus develops. The *Decision No. 915* process, with a large number of cases being officially put on hold while the Tribunal went through a structured process of coming to an understanding about the issues in permanent pension appeals, was merely a formalized, high-profile version of a process that to some extent occurs informally — interstitially and sometimes insensibly — around virtually every significant new issue.

The classic concept of panels of adjudicators as autonomous adjudicating entities operating wholly independently of one another, could not be sustained in these operating circumstances (if, indeed, it is a valid concept at all with respect to a multi-panel, specialized tribunal like the Appeals Tribunal). Panel autonomy and independence was held sacrosanct with respect to findings on factual and medical issues and with respect to the final decisions which each panel ultimately did reach on the generic issues. However, the process of trying to understand the dimensions and implications of generic questions of first impression and of exploring and of understanding the various possible answers to such questions was implicitly a process that had to be shared. Many of one’s colleagues were struggling with the same questions at the same time, and from a system perspective, different answers to generic questions could be afforded at this stage only if they truly reflected a fully informed and thoroughly considered disagreement in principle. And even disagreements of that nature had then to be resolved in subsequent cases.

Internal Tribunal disagreements on generic issues lead to different results in like fact situations depending simply on who happens to be assigned to the hearing panel. Such a situation cannot be tolerated for long. And, at least during this its own formative period, when the Tribunal was confronted with developing an understanding of the

basic principles sufficient to give it a viable operating base, such disagreements had to be worked out within the Tribunal itself.

In a paper of his entitled “The Administrative Tribunal: A View From the Inside”,¹ Professor Paul Weiler, speaking from his experience as Chairman of the B.C. Labour Relations Board, observed that “a realistic appreciation of the administrative world must emphasize its internal diversity as much as its common themes” and that “any map of the administrative terrain which does not indicate that, is useless for legal navigation.”

From my experience as an inside witness of the Appeals Tribunal’s operations I can testify to the truth of Professor’s Weiler’s observation. In my opinion, one of the most important influences on this Tribunal’s “internal diversity” has been the overload of fundamental issues which the Tribunal has had to tackle and resolve during its formative period.

5. The Tribunal’s Management and the Pre-Hearing Caseload

The Tribunal has continued to develop increasingly successful internal management systems. The processing of the Tribunal’s work from receipt of appeals or applications to the completion of the hearing is now being handled from an administration point of view efficiently and appropriately. By the end of the reporting period, apart from the permanent pension cases which had been held pending *Decision No. 915*, there was no significant backlog at the pre-hearing and hearing stages.

In dealing with the transitional backlog, the Tribunal has been assisted significantly by the fact that the incoming caseload did not materialize at the expected levels. There is no doubt we overestimated the capacity of our planned resources. As indicated in the First Report, we planned to hold hearings, and deal with applications which could be disposed of without a hearing, at a total monthly rate of 215 cases. However, experience has determined that with the resources now in place it is not realistically possible to do better than about 185 a month — and that, with everything and everybody working at an optimum level. The normal year-long average rate will be in the order of 160 to 170 cases per month. Fortunately, this production level has proved adequate to deal with the actual incoming caseload and to dispense with the backlog at the pre-hearing and hearing stages.

6. The Post-Hearing Delays

While the Tribunal is in good shape from a production perspective at the pre-hearing and hearing phases of its operation, the same cannot be said for the post-hearing phase. The Tribunal has not been able in its second year to bring its backlog in the *post-hearing*, decision-making part of its process, under reasonable control.

From a statistical perspective, the problem is not overwhelming. Since its inception, the Tribunal has made and released approximately 1,300 interim and final decisions and the average time between completion of the hearing and the issuing of those decisions was 3.7 months. However, in significant numbers of cases it has taken more than six months to issue decisions following completion of the hearing and a number of those have taken twelve months or more. At the end of the reporting period, there were 207 decisions in which the hearing has been completed for more than six months without a decision issuing, and, of those, 47 have been waiting for over 12 months. Not all of these were ready-to-write or had been ready-to-write throughout that period. These numbers include cases held up by the need for post-hearing investigations or submissions (about 20% of all cases). A substantial proportion, however, do reflect a long delay after the ready-to-write point has been reached.

The reasons for these delays will be examined fully in the report which appears below. They are, however, predominantly the inescapable consequence of the issue overload. After trying a number of strategies for bringing this problem under control which have not been successful, as of the end of the reporting period measures have been adopted which I believe provide grounds for confidence that the problem of excessively delayed decisions will be resolved in 1988. These measures are described in the detailed report which follows.

7. The Leading Case Strategy on Permanent Pension Appeal

In this overall assessment of the year’s performance as viewed from the Chairman’s special perspective, it is, of course, impossible to ignore the Tribunal’s leading case strategy in respect of permanent pension appeals. This strategy was described at length in the First Report. It culminated on May 22, 1987, with the release of the Tribunal’s *Decision No. 915*.

The strategy took longer to accomplish than had been anticipated. At close quarters, the issues surrounding the provision of compensation benefits for permanent partial disabilities proved to be more complicated, controversial and difficult than even the Tribunal had supposed, at the time the need for this strategy was first recognized. But we have emerged from the process with a decision which provides an informed and viable basis for now proceeding to deal on the merits with individual appeals in these inherently complex and exceptionally difficult cases.

¹ (1976), 26 *U.T.L.J.* 183 at p. 213, as quoted in an unpublished 1987 paper entitled *Tripartite Adjudication* by Faye W. McIntosh-Janis.

By the time *Decision No. 915* appeared, approximately 500 permanent pension appeals were on hold pending its release. As of the end of the reporting period, the proceeding of these appeals was undergoing a further short delay while the Tribunal and the Board worked out their appropriate respective roles in these cases in the light of the Board's subsequent adoption of its own new policy on chronic pain.

One very unsatisfactory consequence of the pension appeals leading case strategy was, of course, the delays in the processing of pension appeals. By the end of this reporting period, some of these cases will have been waiting on the Tribunal's books for almost two years and, in some of those cases, the appeal will have been filed with the previous Appeal Board some months before that. The 915 analysis also makes it clear that these cases will not typically be susceptible to quick processing even once they are reached. With the large number of such cases, it is apparent that it will still be several months before all of the existing backlog can be disposed of once the present issue with the Board is resolved.

The delays in these cases are a particular manifestation of the general problem of delayed decisions referred to earlier. These cases fell to be decided at the point of an historic transition in the Ontario workers' compensation system and at the point of the creation and early development of a wholly new external appeals tribunal. Their disposition was delayed in order that the Tribunal might take the time needed to develop — in the midst of its own birthing process — an adequate understanding and a fully informed and properly considered position with respect to a set of issues that are truly unique in their sophistication, difficulty, contentiousness and significance.

I am satisfied that, from the Tribunal's point of view, in the circumstances that confronted the Tribunal in October and November of 1985, the pensions appeal strategy was inescapable. The time and resources that strategy absorbed, and the delays in individual cases which it necessitated, were both unavoidable and justified.

8. The Tribunal's Overall Performance

I am personally content that, in the two years that have elapsed since the Appeals Tribunal came into existence, the Tribunal's mandate has been pursued appropriately and, measured against any reasonable criteria of progress, successfully. The delay in the decision-making process is the remaining major structural problem, and there are reasonable grounds for believing that that will be brought under control in the near future.

It remains, of course, true, that the Tribunal's decisions are often controversial in the eyes of either the employer or worker communities. Employers, for instance, are generally unhappy with the Tribunal's chronic pain decisions, with the Tribunal's interpretation of the definition of "accident", and often with the Tribunal's findings on factual and medical issues. Workers, on the other hand, are generally unhappy with the Tribunal's conclusions on the interpretation of section 45(1) and on the validity of the Rating Schedule, and they do not like the Tribunal's criteria for determining the issues in leave-to-appeal applications, its approach to the access-to-file and employer-ordered medical examination questions, and often its findings on factual and medical issues.

Controversy has always been the hallmark of the workers' compensation field and it is not to be expected that an Appeals Tribunal that is doing its job would be immune. It is important, however, that the Tribunal eventually win the general respect of both employer and worker communities as an institution in which decisions are not governed by political or emotional considerations but are determined by an objective application of evidence governed by a true respect for the rule of law. It would, of course, be naive to suggest that we have yet reached that point in the eyes of either community. In this emotionally-charged, politics-dominated field of controversy where the debunking of reasoned analysis has been the tradition, and consequences and outcomes long the only acknowledged measure of acceptability, it will take a considerable period of consistent and persistent performance to compel that kind of respect.

I believe, however, that the Tribunal's performance to date in fact merits respect of that nature and I am confident that if we go on the way we have started, that goal will ultimately be achieved.

THE DETAILED REPORT

A. THE REPORTING PERIOD

The report covers the second, twelve-month period of the Tribunal's existence — from October 1, 1986, to September 30, 1987.

Reporting in respect of an institution's anniversary period is anomalous relative to the usual practice of reporting in respect of a fiscal period (April 1 to March 30). It was justified in the First Report for reasons having to do with the level of public interest in the new Tribunal's first 12 months of existence, and it was my intention to revert in this Second Report to fiscal-period reporting. That shift in the reporting period did not, however, prove either possible or desirable in the circumstances prevailing in March/April of 1987 and in this report I have reverted again to reporting in respect of the Tribunal's anniversary period.

B. CHANGES IN THE ROSTER OF MEMBERS

In the reporting period, a number of changes occurred in the roster of Vice-Chairmen and employer and worker Members. In addition to the normal turnover that is to be expected in any 12-month period, there were a number of special developments. In the first place, we were able to fill the vacancy in the full-time worker Member complement reported in the First Report. Maurice Robillard was appointed in March 1987. He came to the Tribunal from his position as International Representative of the Amalgamated Clothing and Textile Workers' Union of America. His appointment finally provided us with a worker Member fluent in the French language. With Mr. Robillard's arrival, the Tribunal was able for the first time to field a complete French-language Hearing Panel.

Also in March 1987, six, new, part-time Vice-Chairmen were appointed. These appointments became necessary because the utilization rate for part-time Vice-Chairmen turned out to be lower than expected, and the delays in the decision-making process had indicated additional decision-writing resources were required.

In the 1986/87 Tribunal Budget, provision had been made for two additional full-time Vice-Chairmen positions. At budget time it had not been absolutely clear that two additional Vice-Chairmen would in fact be needed but the possibility was clearly apparent. Accordingly, budget provision was made on the understanding that we would continue to vet the situation and move to fill the positions only when the need became clear. One of these positions was filled in August 1987, and at the end of this reporting period a recommendation for the filling of the second position had been made and the appointment was pending.

The filling of the first new position was the occasion for a major internal staff adjustment when Maureen Kenny, who had been the Counsel to the Chairman since the Tribunal's inception, accepted the appointment. By the end of the reporting period, her successor had not yet been selected.

In *Appendix A* (Green) to this report, the reader will find a list of all Tribunal Vice-Chairmen and Members who served in that capacity during the reporting period.

C. THE RELATIONSHIP WITH THE BOARD

1. Introduction

The establishment and maintenance of an appropriate relationship between the Tribunal and the Board is of central importance to the long-term interests of the workers' compensation system in Ontario. As two components of the same system, the Tribunal and Board must have a working relationship which effectively serves the goals and needs of the system.

Since one of the fundamental characteristics of the system design is now a final appeal to an external, independent tribunal, the continued independence of the Appeals Tribunal must be one of the cornerstones of the relationship.

That independence has to be maintained, however, in the context of a relationship which other aspects and needs of the system require to be highly co-operative at an operational level. Furthermore, in a system that is designed to be bureaucratic rather than litigious in nature, ways must be found to maintain this independence without fostering an adversarial environment.

In my view, the working out of this relationship is perhaps the most difficult challenge faced by the Board and the Tribunal as they attempt to implement the 1985 amendments.

In the 12 months covered by the reporting period, there have been a number of occasions for both the Board and the Tribunal to speak to the nature of this relationship, and continual interaction at an operational level has

produced a growing set of precedents of co-operation and interaction. I believe this subject to be of sufficient importance to warrant devoting considerable space in this report to an account of that experience.

2. Concern for the Relationship is Mutual

It is important to recognise at the outset that, overall, the relationship between the Board and the Tribunal has been very positive throughout the Tribunal's short life. It is apparent that the Board has been as concerned as the Tribunal to see the specifics of this relationship developed as carefully and constructively as possible.

3. The Tribunal's View of the Relationship

In the Fall of 1986, the Board asked the Tribunal to reconsider the Tribunal's *Decision No. 72* in the light of the subsequent Ontario Court of Appeal decision in *Kuntz and Dagenais*. This was the first such request the Tribunal had received and it required the Tribunal to address various aspects of the relationship between itself and the Board. The views expressed in that decision (*Decision No. 72R*) are of particular interest on this subject of the Tribunal-Board relationship.

In the first place, the Tribunal's Hearing Panel in that case recognized the appropriateness of the Board's initiative in attempting to discover whether or not the Tribunal might change its mind on *Decision No. 72* in light of the Court of Appeal decision, before the Board resorted to the section 86n review procedures. The proceedings under section 86n involve a large volunteer board of directors with a heavy management agenda and are inherently difficult and cumbersome. It was a correct approach, in the Tribunal's Panel's respectful view, for the Board to be concerned not to invoke that procedure wherever it can be properly avoided. Furthermore, the procedure of asking the Tribunal to reconsider its decision in the light of the Court of Appeal decision had the additional advantage of avoiding having the board of directors deal with the issue under its section 86n procedures without the benefit of the Appeals Tribunal's views as to the implications of the Court of Appeal decision.

The 72R Panel accepted the worker community's submissions that the Board ought not to be seen to have any standing to *cause* a reconsideration of any Tribunal decision to be taken other than through the 86n procedures, but insisted on the Tribunal's right to invite participation from whomever might reasonably assist the Tribunal in its proceedings and to define the nature of that participation as it thinks helpful. It acknowledged the fact that in many cases the Tribunal would be unable to meet its own obligations without the Workers' Compensation Board providing it with information about the Board's policies and practices.

The Panel noted a distinction between the Board participating in the Tribunal's proceedings for purposes of providing information, and the Board participating in those proceedings for the purpose of *advocating* a particular point of view with respect to issues of general policy or law. The worker community argued that the Board ought not to appear in an advocacy role before the Tribunal. Such a role for the Board was said to be incompatible with the principle of an independent Tribunal and also, given the section 86n review procedure, it put the Board in the position of advocating a point of view before the Tribunal in the circumstance where if it lost the argument at the Tribunal it might then review and itself decide the same issue on a section 86n review of the Tribunal's decision. In those circumstances, the Board would in effect be seen to be advocating a position in the first instance and adjudicating it in the second.

The Panel was concerned, however, that if the Tribunal's hearing panels were prevented from hearing informed advocacy in support of the views of the Board's administrators on issues concerning general policy or law, the likelihood of a hearing panel in a particular case failing to understand some significant element of the Board's policy, guidelines or practices, or failing in its reasons to deal effectively with significant concerns of the Board's administrators would be greatly increased. It noted that Appeals Tribunal's decisions which were deficient in that respect presented a problem. In a particular case, such a decision would be substantially less helpful to the board of directors in its section 86n consideration of the issues than would otherwise be true, and from a broader perspective the board of directors general impression of the credibility and reliability of the Appeals Tribunal's views on such issues would be generally undermined by decisions deficient in that respect. For the section 86n process to work the way it was intended it was essential, in the Tribunal Panel's view, that with respect to issues concerning policy and general law, Tribunal decisions address the views and concerns of the Board's administrators in a knowledgeable and insightful manner. Since the Tribunal's ability to do that would be substantially hampered if it were prevented from hearing informed advocacy of those views, the Panel concluded that the Tribunal must consider itself free to continue to invite the Board to contribute to the Appeals Tribunal's hearings not only by providing information but also in appropriate cases by making advocacy-style submissions.

While the 72R Panel found that the Board had no standing to cause the Tribunal to reconsider any decision (apart from the Board's 86n powers), it indicated that the Tribunal ought to issue a standing invitation to the Board to inform the Tribunal of what it regarded as obvious deficiencies in any of the Tribunal's published decisions. It would then be up to the Tribunal as to whether such information was so significant as to warrant the Tribunal itself initiating a review.

Communications of that nature are now on occasion being received from the Board — usually by letter addressed to the Tribunal's General Counsel. They generally bring to the Counsel's attention matters of importance at the level of principle which the Board's staff believes from its reading of a decision the hearing panel in the case may have simply overlooked. These communications are reviewed by the General Counsel and by the Tribunal Chairman and if they are seen to raise appropriate matters of potential substance the Chairman will consult with the hearing panel who decided the case. If it appears to the Panel that the Board's point is substantial, then the parties to the proceedings will be sent a copy of the Board's letter and asked to make submissions on the question of whether the Board's concerns are such as to justify the Tribunal re-opening the decision and embarking on a reconsideration, having regard for the Tribunal's usual criteria in that respect (see below). To date, these communications from the Board have been infrequent and up to the end of the reporting period none had yet progressed to the point where they had in fact triggered a reconsideration in any particular case.

In an effort to minimize the times when the Tribunal decides a case in ignorance of relevant information which the Board could have provided, and to ensure that its hearing panels understand the concerns and perspectives of the Board's staff when the panels are deciding an issue of generic interest, the Tribunal on its part engages in its own communication initiatives. When the potential implications of the case in that regard are understood prior to the hearing, the Board is invited to make submissions at the hearing, and when the implications are first appreciated at the post-hearing stage, the issue is then put to the Board's staff and they are invited to make post-hearing submissions to the hearing panel. Submissions at the latter stage are in writing. In either situation, the Tribunal's communications with the Board is in writing with copies of the letters to the parties in the case. The parties are provided with ample opportunity to respond to the Board's submissions.

In addition to the above communications there is almost daily traffic between the Tribunal's General Counsel and his office and the Board's General Counsel and her office addressed both to the sorting out of the logistics of file transfers and the like, and to a sharing of developing concerns of a generic nature. A current instance of the latter type of exchange is the discussions which have been going on through that channel as to the implications of the Board's new chronic pain policy for the Tribunal's jurisdiction with respect to the pension appeals that had been on hold pending *Decision No. 915*, and as to the procedures the Board is proposing to adopt in respect to cases referred back for review under that new policy.

With respect to the foregoing exchanges between the Board's and the Tribunal's staffs, it is important to appreciate that it has been explicitly understood from the beginning that the Tribunal is unable as an institution to make any agreement with the Board that is effective to bind any interest of the parties to any case. The Tribunal's powers to make decisions on substantive issues can, in the ordinary course, only be exercised by a hearing panel in the context of deciding a particular case. A hearing panel's powers in that respect cannot be constrained by any previous institutional agreements in respect of such issues between the Tribunal and the Board.

A major determinant of the nature of the relationship between the Board and the Tribunal is the Tribunal's view as to the standard of review by which it is governed when it considers appeals from the Board's decisions. In many of its decisions the Tribunal has considered expressly the standard of review. For an appeal to be successful is it enough that a Tribunal hearing panel find the Board's decisions to be merely wrong? Or, are the Board's decisions owed some deference such, perhaps, as that showed generally to decisions of administrative tribunals by the courts? Might the Board's decisions have to be patently unreasonable before the Tribunal is entitled to interfere?

To date, the Tribunal's decisions have generally held that deference is not owed; that the question the statute obligates the Tribunal to answer is, is the Board's decision *correct* — does it reflect a correct view of the facts in the case? Is it in accordance with the Act? It seems likely, however, that there are limits to this general rule and these continue to be explored.

4. The Line between the Board's Business and the Tribunal's Business — Section 86g(2)

The essential nature of the formal relationship hinges also, of course, to a significant degree, on how section 86g(2) — the section which specifies the circumstances under which the Tribunal's right to intervene in the Board's decisions arises — is interpreted. The section reads as follows:

86g(2) The Appeals Tribunal shall not hear, determine or dispose of an appeal from a decision, order or ruling of the Board unless the procedures established by the Board for consideration of issues respecting the matters mentioned in clause (1)(b) or (c) have been exhausted, and the Board has made a final decision, order or ruling thereon.

This section's straightforward appearance belies the difficulty of its application. The Tribunal's *Decision No. 3* is a case which provides a particularly illuminating example of that difficulty as well as a comprehensive exposition of the Tribunal's current approach to sorting out when it is appropriate for it to act and when it must refer matters back to the Board.

The appropriate passages read as follows:

At the outset of the hearing in this case, the employer questioned whether the Tribunal had the jurisdiction to hear and determine the issue as to whether there was entitlement for compensation for any injury arising out of a stroke. The point the employer made was that because the Workers' Compensation Board's Appeals Adjudicator had decided that the injury was caused by a disc problem, the Board never had occasion to consider what the effect would be on the worker's compensation rights if the injury were seen to be caused not by a disc problem but by a stroke. The employer argued, therefore, that this was a case where it could not be said that the Board's procedures for consideration of the issue of entitlement to compensation for injury caused by a stroke had been exhausted. Accordingly, under the terms of section 86g(2), the Appeals Tribunal was prohibited from considering that issue and should, instead, send it back to the Board for initial determination.

The Appeals Tribunal's approach to its jurisdiction to set issues and its reading of the limitations imposed by section 86g(2) is set out in the Pension Assessment Appeals Leading Case Interim Report (section E). This Panel is satisfied that the principles and considerations in that decision are appropriate for consideration of the jurisdictional issues raised by the employer in this case.

Section 86g(2) sets up limits to the Appeals Tribunal's jurisdiction which differ depending on how one chooses to characterize the issue or issues determined by an Appeals Adjudicator's decision. For example, the employer says that what the Appeals Adjudicator decided in this case was that the left arm injury was caused by the disc protrusion; the disc protrusion was caused by the accident, and, accordingly, compensation followed. One can, however, just as validly characterize the decision as: "the worker's disability resulted from a compensable accident". In the former case, the employer can argue, as he in fact does, that if on appeal to the Tribunal it now appears that the left-arm injury was not caused by the disc protrusion but by something else — in this case a stroke — it becomes apparent that the Board has not had an opportunity to consider with respect to this other medical cause whether it was caused by the accident, and if it was, whether it was compensable.

In fact, if the employer's argument were to succeed in this respect, he would also have established that the Tribunal had no jurisdiction to determine whether a stroke had occurred. The stroke theory was not put forward at any point during the Board's procedures — it surfaced for the first time in this Appeal. Thus the stroke issue is also an issue in respect of which it can be said that the Board's procedures have not been exhausted, and which, therefore, should be referred to the Board for initial determination.

To accept the employer's appreciation of the intent of section 86g(2) would be to set up the following scenario. The case is sent back to the Board on the stroke issue. The Board decides there was no stroke. The employer appeals. The Appeals Tribunal decides there was a stroke. The case is sent back for the Board to consider whether the stroke resulted from the accident (the Board would not have had reason to consider that issue because it had concluded there was no stroke). The Board says, no, the stroke did not result from the accident. The worker appeals. The Appeal Tribunal says, yes the stroke did result from the accident. The matter then goes back to the Board to decide whether a disability caused by a stroke resulting from an industrial accident is compensable. The Board says yes it is. The employer appeals. . . .

This is a scenario from the theatre of the absurd and it comes to life once you accept that 86g(2) is intended to refer to all the various sub-sets of issues underlying any major question.

If, however, you characterize the issue decided by the Board in the broad terms previously mentioned — i.e., "Did the worker's disability result from a compensable accident?" — then the ping-pong process is avoided. Obviously, if that is the issue before us, on that issue the Board has exhausted its procedures and made a final decision.

There is nothing in the wording of the section 86g(2) which requires, for purposes of the section, issues to be characterized in terms of the major substantive issue or the sets of sub-issues underlying the major issue. The choice appears to be open.

It will appear from [the Leading Case Interim Report referred to above] that the Tribunal has opted for a practical approach to this question. In the ordinary course, in the interest of avoiding the ping-pong scenario, it will for the purposes of 86g(2) characterize the issue that had been before the Board in the broadest possible terms. However, where a sub-issue arises — often as a result of a Tribunal decision on some other issue — which is known to be novel

or contentious and which the Board has clearly not had an opportunity to consider, the Appeals Tribunal will abide by the obvious spirit of 86g(2) and refer that issue back to the Board for prior determination.

The list of the principles and considerations which should apply in determining the Tribunal's jurisdiction, which were set out in the Tribunal's Pension Assessment Appeals Leading Case Interim Report and referred to in the above passage, were included in Appendix E to the Tribunal's First Report. Since they are not too long, in the interest of completeness the especially pertinent portions are repeated here.

11. The general purpose of Section 86g(2) is clear. The legislature obviously wants to ensure that the WCB's special expertise, experience and policy perspective is allowed its usual and proper role before the Appeals Tribunal becomes involved. It is equally clear, however, that the legislature cannot be taken to have intended to require a multiplicity of proceedings to no practical purpose.
12. Having regard to the foregoing factors, in selecting in any particular appeal the issues it will hear and determine the Appeals Tribunal intends to be governed by the following criteria:
 - a) The parties' views as to the issues the Tribunal should address will be given great weight and only for substantial reasons will they not be followed.
 - b) The set of issues that were explicitly or implicitly "present" in the adjudicator's decision are the starting point of any issue identification process, and the deletion or addition of issues from that basic set will require substantial reasons.
 - c) In the interest of efficiency and speed, a case should not be complicated by the Tribunal's addition of issues unless there is a clear necessity.
 - d) The Tribunal's bottom-line question in selecting issues is, What issues is it essential to consider in determining the true merits and justice of this case having proper regard for all competing interests?
 - e) Where an issue arises and it is apparent that the WCB has special expertise, experience, or a policy perspective in respect of that issue, which in the proceedings to date have not had their appropriate play, the Tribunal must refer that issue back to the Board for determination in its usual processes.
 - (f) In considering an application of the policy in the preceding paragraph, the Tribunal must also have appropriate regard for the competing policy of not prolonging the WCB-Appeals Tribunal decision-making process to no practical purpose.

5. How the Board Sees the Relationship — the Application of 86n

An issue of special interest concerning the relationship between the Tribunal and the Board is how the Board's own ongoing operations are in fact affected by decisions of the Tribunal which are inconsistent with the Board's existing policies or practices. The Board's position in this respect, as stated to the Legislature's Standing Committee on Resources Development and elsewhere is that the Board considers itself generally obligated to adopt the Tribunal's view of such matters unless it decides to review the decision under the provisions of section 86n. The Board has made it clear, however, that before it adopts a change in its policies or practices in accordance with a Tribunal decision (or before it embarks on an 86n review) there will usually be a period of review following receipt of the decision during which the Board will study the merits of the Tribunal's position. During this period of review, the Board's current practice or procedure will continue to be applied as before.

The Board has established a staff committee with the responsibility for carefully reviewing all Tribunal decisions as they are received, and for recommending to the Board Chairman what steps, if any, should be taken in respect of each decision and in particular whether it is a candidate for referral to the board of directors for possible review under section 86n. This committee reports monthly. Its detailed report, which includes a summary and an analysis of each Tribunal decision issued in the month covered by the report, is routinely provided to each member of the board of directors. The distribution list includes, of course, the Chairman of the Appeals Tribunal who is an *ex officio* member of the board of directors.

It is obvious from the staff committee's report that the committee not infrequently encounters Tribunal decisions which are inconsistent with established Board policy or practice — or with the Board's medical staff's established views — but in which there is sufficient potential merit that it is not possible for the committee to decide what recommendation to make to the Chairman on the 86n review issue without further study. Indeed, if the Tribunal is doing its job, a high percentage of the conflicting decisions should present the Board's staff with that type of problem.

This category of case is currently being referred to the appropriate section of the Board's organization for a policy review, and the decision as to what to recommend to the Chairman and the board of directors in respect of the issues in such cases is being postponed pending completion of that review. In the meantime, the specific decision is usually implemented.

The practice of implementing the specific decision notwithstanding that the Board's staff has found within that decision a conflict with established Board policies or practices of sufficient importance to warrant a policy review, reflects the emerging Board view as to the restricted purposes to which the section 86n powers should be put. This is a view which is of very considerable general interest.

The theory, as I understand it, is that the section 86n powers of review are to be involved only for the purpose of ultimately resolving differences of principle between the Tribunal and the Board and not for the purpose of ensuring that the Tribunal gets everything right in every individual case.

This is a view as to the application of section 86n to which there appears to me to be no practical alternative when one considers the realities of the Tribunal-Board situation and the nature of the 86n process.

In the first place, the Tribunal is likely to be issuing about 110 to 140 decisions a month, on average. These will be decided by hearing panels involving any one of approximately 20 different individual Vice-Chairs and about the same number of worker and employer Members respectively. Any of these decisions may contain an interpretation of first impression of some section of the Act or of some part of the Board's policies or Guidelines on which the Tribunal has not previously expressed a view. But one decision on a novel point does not establish a firm *Tribunal* position on a point of principle. And for the Board to invoke 86n every time a decision issues which is inconsistent with a board policy or with an established Board view of the meaning of the Act would involve the commitment of the board of directors' limited resources to the cumbersome 86n procedures many times a month and in respect of issues on which it will not yet be clear what the final Tribunal position is.

Furthermore, issues of policy and general law which the 86n procedures are designed to address are frequently multi-dimensional issues. And it will be rare for one decision of the Tribunal to provide a sufficient indication of the Tribunal's position with respect to the various aspects of such an issue to make a board of directors' review of such a matter fruitful.

In my view, the intervention by the board of directors, before the Tribunal's position on a new issue has been allowed to develop over the course of a number of decisions, is likely in the nature of things to be premature and, therefore, less useful and possibly disruptive.

This view of the section 86n procedures as a means for the ultimate sorting out of intractable and well-defined differences concerning major matters of principle only, involves acceptance of the fact that while the Board's policy reviews are proceeding and the right moment for an 86n review is being allowed to develop, numbers of individual Tribunal decisions which ultimately may prove to be inconsistent with the position finally established through an 86n process, will have been implemented. This appears to be a price that has to be paid if the process for resolving major differences between the Tribunal and the Board is to be allowed to proceed in a rational manner. What is to be done with these cases subsequently, is a question for the Board's policies concerning retroactivity or the collection of over-payments or, perhaps, for its S.I.E.F. policies.

The point at which worker and employer representatives encounter the Board's attitude to Tribunal decisions in its most practical form is when they attempt to cite Tribunal decisions to Board claims adjudicators or Hearings Officers as precedents to be followed in current cases in which they are appearing. The Board's instructions to its adjudicators and to its Hearing Officers is that Tribunal decisions are not to be regarded by them as overriding existing Board policies. When the cases being cited are cases which have not been reviewed or which are not under review in 86n proceedings, this policy gives the appearance of the Board ignoring the precedent value of the Tribunal's decisions. However, it is apparent that this policy in fact reflects a practice dictated by administrative necessities which ultimately is consistent with the Board's stated commitment to being guided by Tribunal decisions if they are not reviewed under section 86n.

Because of the restricted use to which section 86n can be put for the reasons referred to above, there will always be numbers of Tribunal decisions which have not been referred for a section 86n review but which are the subject of policy reviews by the Board — cases in which the Board has not accepted the policy implications of the Tribunal's decision but is in the midst of the sometimes-prolonged process of studying the issue with a view to deciding whether to recommend an 86n review or a change in Board policy. In these circumstances, acceptance by the Board of the proposition that decisions of the Tribunal which have not been subjected to the 86n processes are automatically precedents which claims adjudicators and Hearings Officers should follow, would effectively short-circuit the 86n process.

It is apparent that the Act does not contemplate, and in the long run the system could not tolerate, a situation in which the Board habitually applied policies or interpretations of the Act which were inconsistent with established Tribunal positions which it had failed to review under the 86n process. Both the Board and the Tribunal agree with

that proposition. It is, however, a practical impossibility for the Board's and the Tribunal's respective positions on general law and policy questions to be continuously fully reconciled on a case-by-case basis. As the differences emerge, there must be a rational process of reconciliation which in the nature of things will often require some considerable time. In the end, such reconciliation can only be accommodated by one of three things: a Tribunal-initiated change in its position; an 86n review; or a board of directors' decision to adopt a change of policy or interpretation that will bring the Board's position into line with the Tribunal's position.

6. Who Has the Ultimate Say?

The question which will determine the most significant aspect of the Board — Tribunal relationship has, of course, yet to be addressed — the question of who ultimately has the last say. The answer to this question is to be found in the interpretation of section 86n(1), particularly of the following words:

. . . the board of directors of the Board may in its discretion review and determine the issue of interpretation of the policy and general law of this Act and may direct the Appeals Tribunal to reconsider the matter in the light of the determination of the Board of Directors.

The Tribunal is aware that views differ as to whether or not these words leave the Tribunal any room for further independent action once the board of directors has made its determination and issued its direction. The interpretation of this section in this respect falls to be determined, at least in the first instance, by the Appeals Tribunal itself. This will occur when the Tribunal receives a direction from the board of directors under this section. As of the end of the reporting period, no directions had yet been received.

The Tribunal's decision as to the meaning of these words will be made by a hearing panel assigned to determine the effect of a board directive in a particular case. The decision will follow a hearing on the matter in which the worker and employer in the case will have been titled to make submissions. It is, therefore, clearly inappropriate for the Tribunal to come to a prior, institutional view on the matter. Furthermore, the meaning of these words can best be determined through their application to the particular circumstances of concrete cases. Accordingly, until occasions for such decisions arise, the system must continue to live with some uncertainty concerning the method by which intractable differences between the Tribunal and the Board are to be finally resolved.

7. The Tribunal Chairman's Role as Member of the WCB Board of Directors

The other significant element in the structuring of the Board-Tribunal relationship to which reference has so far not been made is the Statute's designation of the Tribunal Chairman as an *ex officio*, non-voting member of the Board's board of directors.

This arrangement is perhaps unique in the annals of administrative law experience. It is especially peculiar in its deliberate creation of a role for the Tribunal Chairman which is inherently fraught with conflicts of interest.

The Board's policies and its interpretations of the Act are, in all major matters, ultimately approved by the board of directors. Many of these decisions — all of them potentially — ultimately come to the Tribunal for review, and, in the natural order of things, often for a review conducted by a Tribunal hearing panel chaired personally by the Tribunal Chairman.

While the Tribunal Chairman's role on the board of directors is that of a non-voting member, presumably the statute did not intend the role to be insubstantial. Accordingly, the statute must be seen to contemplate the Tribunal Chairman participating fully in the board's discussion of issues and having the same access to Board information as is available to any other member of the board of directors.

By the end of the reporting period, the board of directors and I have had two years of experience with this unique relationship and some tentative conclusions about the viability and usefulness of the role may now be drawn. Necessarily, of course, the conclusions as they appear here reflect only my own impressions of how the arrangement has worked and of the complications and difficulties it has presented.

Except for a small number of absences attributable to conflicting schedules, I have attended all of the board of directors' regular meetings since the new board met together for the first time. I have deliberately absented myself from the board hearings of the section 86(n) review of *Decision No. 72* and from any discussion of the decisions which the board of directors is to make pursuant to that review. I have also absented myself from discussions of certain agenda items during regular meetings from time to time. Typically, these absences occurred with respect to items involving issues which I knew at the time were already under explicit consideration by the Tribunal in cases then before it.

The occasions when I excused myself from the meetings while discussion was held on a particular agenda item occurred more frequently in the earlier months of the experience when nervousness about the conflict of interest aspect of the role was most acute. As the experience with the role developed, however, it became apparent that traditional responses to normal conflict concerns would effectively deprive the role of any substance. It would mean that the Chairman would be absent from the board meeting whenever his presence would be potentially significant.

Accordingly, in the latter months of the reporting period I absented myself infrequently and participated in board discussions and accessed Board information with respect to many matters in respect of which normal criteria for identifying undesirable conflict situations might have suggested a different course.

I have, to take one example, participated in board discussions of whether or not to exercise its right of review under section 86n in respect of particular Tribunal decisions. (In these discussions I have limited my contribution to the question of how the section is intended to be used from a systemic perspective and have refrained from defending the Tribunal's decision or discussing its merits.)

It is apparent that when the Legislature caused the Workers' Compensation Act to designate the Appeals Tribunal Chairman as a member of the WCB's board of directors it deliberately put the Chairman into a position of inescapable conflict of interest as that concept has traditionally been understood. The Legislature cannot, therefore, have intended that the proprieties of the Chairman's activities in the role would be judged against traditional conflict-of-interest principles. Neither can it have intended that the normal principles concerning bias—as they pertain to adjudicators—apply to the Tribunal Chairman in his role of a hearing-panel chairman in a way that would rule out his sitting personally on appeals by reason of his position as a member of the WCB board of directors or because of his participation in previous discussions in the course of performing that role. There is nothing to indicate that the Legislature did not intend the Tribunal Chairman to be active in both roles. Indeed, the indication is clearly to the contrary. The Legislature must therefore not have intended that the nature of the one role would restrict and constrain the Chairman's activities in the other.

There is no doubt that the statutory appointment of the Appeals Tribunal Chairman to the WCB board of directors plays hob with traditional ways of looking at things in our legal system. It would seem, however, that this is in fact what the statute intended.

It is my own view that the Tribunal Chairman's position as a member of the board of directors has in fact turned out to constitute an essential link between the Board and the Tribunal. My participation in the discussions and deliberations of the board of directors on the full range of the Board's business has contributed to my understanding of the context in which the Tribunal's decisions are being made and has enhanced my ability to understand the system implications of issues the Tribunal is called upon to decide. This, in my view, is essential input to the body of background knowledge which the Appeals Tribunal must have if it is to fulfill its role as a specialized tribunal, in a field also occupied by the Board.

The existence of this channel of information between the Tribunal and the Board is inherently worrisome from the point of view of the principle to which the Tribunal is otherwise committed — i.e., that hearing panels are not to have information which has not been made available to the parties. It is, therefore, important to make the point in this regard that this channel of information is not being used, nor should it be used for the purpose of obtaining from the Board specific information about individual cases. The knowledge gained through this channel is of a general nature and if there is ever an occasion for such information to be used in a particular case, the Tribunal would have to ensure that the information was indeed shared with the parties in that case. The information, however, is no different in this regard than the information which the Tribunal Chairman and other panel members acquire in the ordinary course from their personal general reading and from their daily exposure to the evidence and submissions in the range of cases in which they are involved in the course of their regular activities.

Of more subtle importance but not less significant are the opportunities the role provides for the Tribunal Chairman and the other members of the board of directors and the Board Chairman, President and other senior members of the Board's management to lay the foundations of personal confidence which are so helpful in the avoidance of misunderstandings in the relationship the statute has established between the Tribunal and the Board.

The Tribunal Chairman's position on the WCB board of directors has also made the board meetings into a forum in which the Board-Tribunal relationship can be discussed and problems and misunderstandings cleared up before they become entrenched. Thus, when problems with the relationship do arise, they arise in circumstances where both parties have a clear picture of the other's position and the relationship is not endangered by mere misunderstandings. The Tribunal Chairman's presence at board meetings has also helped to enforce continuing awareness in the minds of both institutions of their respective roles as complimentary components of the same system.

The danger inherent in the arrangement is, of course, obvious. It is that the Tribunal Chairman will be co-opted by his involvement in the business of the Board and by the personal relationships that such an association promotes, and that he, and thus the Tribunal, will thereby lose the capacity — or possibly only the thirst — for the independent and objective review of the Board's decisions which the Act contemplates.

There are, however, two safeguards in this respect which, in my view, make the risk a reasonable one from a system perspective given the important advantages. The reference here is to the fact that the board of directors is a representative board with members representative of both the employer and worker communities (as well as of the public and the medical profession) and the Tribunal is a tripartite Tribunal with members representative of both

workers and employers. Thus the Tribunal Chairman's activities at the meetings of the board of directors are carried on under the supervision, as it were, of the employer and worker Members. And his activities and attitudes at the Tribunal are subject to the influence of a tripartite process quite capable of challenging a Chairman thought to be too much in the Board's pocket on any particular issue.

The role is often difficult and there are obvious dangers. However, based on the experience to date, it is my opinion that the role has proven, on balance, to be a workable and important component of the total system design.

D. THE RELATIONSHIP WITH THE GOVERNMENT

As reported in the *First Report*, the Appeals Tribunal has been categorized by the Government as a Schedule I (anomalous) Agency. The relationship is governed by a Memorandum of Understanding between the Minister of Labour and the Chairman of the Tribunal which is approved by Management Board of Cabinet. At the end of the reporting period, this memorandum was still in the approval process, but at the time of writing, approval has been received. A copy of the agreement is enclosed as Appendix B (Yellow).

E. THE RELATIONSHIP WITH THE OMBUDSMAN

The Ontario Ombudsman has always been heavily involved with complaints concerning workers' compensation matters. His reports are acknowledged to have played an important role in the reform movement which culminated in the Bill 101 amendments to the Act. This Tribunal's relationship with the Ombudsman is, therefore, of special interest.

Up to the end of the reporting period the Tribunal has been advised of 51 complaints received by the Ombudsman in respect of decisions of the Tribunal. The Ombudsman has reported in respect of 11 of these and has concluded in each case that the Tribunal's decision was not unreasonable.

The working relationship between the two organizations has been marked by a high degree of co-operation combined with an open exchange of views. The Ombudsman's organization will be aware, however, that I continue to believe that the Ombudsman's review of the *merits* of Tribunal decisions — as distinguished from its procedures and process — is, from a system perspective, inappropriate, although — in the light of the results of the Ontario Labour Relations Board's recent court challenge — now, apparently, clearly within his statutory authority.

F. THE SIX-MONTH TURNAROUND GOAL REVISITED AGAIN

At the time the Tribunal came into existence, I stated that it was the Tribunal's intention to work towards the goal of dealing with all but exceptional cases — from notice of appeal to the issuing of the decision — in not more than six months. In its Workers' Compensation Board Report dated November 1985, the Legislature's Standing Committee on Resources Development criticized that goal and recommended that it be reduced. In my first report, a year ago, that recommendation was addressed and I concluded that while for some categories of Tribunal cases a turnaround goal of less than six months was both desirable and practical, cases involving entitlement or quantum issues could not typically be dealt with appropriately in less than six months. Further experience now suggests that with respect to the latter category of cases even that assessment was unrealistic.

The six-month cycle anticipated four months of pre-hearing preparatory work. Now, after 12 months of experience operating at or near full production, it is apparent that the four-month estimate for the pre-hearing phase of the Tribunal's work reflected an insufficient appreciation at the time, of what in fact would be required for all of the pre-hearing activities. The Tribunal's current experience indicates that a more reasonable estimate would be five to six months from the notice of appeal to the hearing date.

Because this slippage in the anticipated turnaround time will be a matter of concern for many in the Tribunal's various constituencies, it is necessary to address the reasons for it in some detail.

PRE-HEARING PROCESS — ENTITLEMENT AND QUANTUM CASES

Stage	Time	Content
Intake Process:	3 weeks	1 week intake processing at the Tribunal and 2 weeks to requisition and receive a photocopy of the full Board file.
Tribunal Counsel Office Processing:	8 weeks	File review, issue identification, Case Description drafting, checking medical evidence, research of law, dealing with access to file question, etc.

Case Description Distribution:	2 weeks	Case Description out to parties and case on hold to give parties or their representatives an opportunity to study it and make suggestions.
Scheduling Process: (From receipt in the scheduling department to settlement date)	3 weeks	Contacting all interested parties and negotiating agreed date (telephone “tag” is a significant factor) or waiting for parties to request a date.
Usual period between settling the date of hearing and the date itself:	6-8 weeks	To accommodate representatives’ schedules and to allow for parties to prepare for hearing.

The processing of cases through the Tribunal Counsel Office part of the cycle is under continuous review and it may ultimately prove possible to reduce the time by some margin. However, I believe that the times indicated above for each of the pre-hearing activities are not generally unreasonable allotments having regard to the nature of those activities. It is also to be noted that a significant portion of the total time allotted has been set with the convenience of the parties and their representatives in mind.

In summary, while it is to be hoped that in the future the Tribunal will ultimately be able to reduce the pre-hearing cycle for entitlement and quantum cases to four or five months, the cycle is currently five to six months and, under prevailing circumstances, I believe that range to be both necessary and appropriate.

With respect to the two-month turnaround goal in the post-hearing phase of the Tribunal’s activities, this is the area of the Tribunal’s production which, as explained in the Chairman’s Overview (see above) and in the extensive report below, the Tribunal has yet to bring under control whether the two-month target is in fact generally realistic remains to be seen.

Experience does indicate, however, that in complex cases involving issues of serious controversy, tripartite decision-making cannot be accomplished as a regular rule in two months. In cases of that type, three to four months is a more realistic goal. Currently, at least, the proportion of cases which fall into that category is high. Thus at this point in time, even with the process under appropriate control, the Tribunal would find it difficult to meet the two-month goal in a general way.

It is appreciated that the foregoing news is not what the Standing Committee and others want to hear. It is, however, the reality and must be reported as such. My colleagues and I continue to believe strongly that with respect to significant and difficult cases — a category which, as indicated, accounts currently for a high proportion of the Tribunal’s caseload — it is not appropriate to treat speed of disposition as an overriding consideration.

G. THE TRIPARTITE FEATURE — A PROBLEM

As indicated in the Chairman’s Overview, the Tribunal especially values its tripartite character and has strived to make that feature of its design work as effectively as possible. The Vice-Chairs, the employer and worker Members and I, all believe that effort to have been successful. The Tribunal’s hearing and decision-making processes are carried on in an environment of mutual respect in which all points of view receive a careful hearing and considerable efforts are devoted to finding answers which accommodate the concerns of all members of a hearing panel.

The latter effort, it must be noted, does not reflect a commitment to unanimity as a value in and of itself. The Tribunal has always recognized the inappropriateness of sacrificing the rights of employers or workers in a *negotiation* amongst panel members directed to achieving a unanimous decision. The effort typically directed towards resolving the concerns of all three members of the hearing panel reflects rather the group’s confidence that if one of its members is deeply concerned by the decision favoured initially by the majority, then there is likely to be something at the bottom of that concern which from the system’s perspective merits the whole group’s careful attention.

This genuine commitment to understanding and, if possible, resolving all members’ concerns has contributed substantially to the length of the decision-making process but, in my view, has also played a prime role in ensuring the quality and relevance of the Tribunal’s decision.

It is that commitment which, in my opinion, explains the surprisingly low percentage of cases in which dissenting opinions have been registered. (The percentage appears still to be below 5%.)

In a field as inherently contentious and emotion-laden as this one, the extremely high proportion of unanimous decisions is obviously remarkable. The problem is that it is so remarkable that it has led the worker and employer communities to question whether “their” members on the Tribunal are in fact doing the job they are supposed to be doing. That questioning is, in turn, pressuring the Tribunal’s worker and employer Members to adopt more partisan postures. The communities’ attitudes are thus threatening the true effectiveness of the tripartite design.

What makes the design work — what motivates the careful listening and honest efforts to understand and resolve

other members' concerns — is the confidence that concerns expressed are genuine; that when a colleague disagrees it is because he, himself, or she, herself, honestly sees the thing differently.

Were it to become apparent that a colleague's disagreements reflected mere advocacy or posturing for the purpose of manipulating panels towards preconceived partisan conclusions, or even if the environment were to change sufficiently so that one could no longer be confident that the concerns expressed by one's colleagues were necessarily genuine, then the responses to such concerns would, in their turn, become partisan and manipulative. Very shortly, neither of the representative members would be truly directing their minds to the actual merits of the issues, and shortly after that, the panel chairs would stop caring what their colleagues were saying. The caucus would thereby become nothing more than ritual, and the decision would be effectively made by the panel chair. At that point, the Tribunal's tripartite character will have gone the way of the tripartite character of most labour arbitration boards and become mainly a façade.

Both worker and employer communities — or at least their representative organizations — must appreciate the importance of the Tribunal members representative of their communities making decisions as they see them on their merits, without regard for the popular, partisan or political point of view. Having members with the courage and freedom to act in that manner is the only way that members representative of employers or workers will continue to play any meaningful role at the actual decision-making stage.

Such communities and their organizations must also appreciate that it will be common for their representative members, acting in that manner, to reach conclusions on individual issues or cases which differ from the views of their respective communities. The Tribunal's process of adjudication and the detailed bi-partisan information and arguments to which an adjudicator who is honestly considering a case is subjected in the course of such process will frequently lead to that result.

To attribute the high proportion of unanimous decisions to the representative members being co-opted by their association with the Tribunal, or to their not knowing enough or not being skilled enough at persuading their colleagues on the panel to their community's point of view and not caring enough to dissent, is to question the integrity of the representative members or to misunderstand their essential role.

The employer and worker Members of the Tribunal are, without exception, people with highly relevant and senior experience of the workplace. A perusal of the brief resumes in Appendix A will confirm that fact. To a dispassionate observer, the fact that such a group of individuals are *all* found regularly signing unanimous decisions that run contrary to the instinctive views of their respective communities (views they themselves would have held before being involved as adjudicators in the cases in question) would presumably suggest that exposure to bi-partisan arguments, access to all of the actual evidence, and the acceptance of a duty to try to view the issues objectively, very often lead men and women of integrity to conclusions opposite to what a partisan point of view would suggest must be correct.

It would be helpful to the work of the Tribunal if the worker and employer communities were more inclined to see unanimous decisions that run contrary to their interests, as evidence that there may be more to the other side of the argument than they have been prepared to concede, rather than as reasons for denigrating the motives, commitment or abilities of the Tribunal's representative members.

H. OPERATIONAL ASPECTS

1. Introduction

The Tribunal's adjudicative processes and its administrative organization and systems have, of course, during the second 12 months of its existence continued to be in a developmental phase. By the end of the reporting period, the Tribunal had experienced about 21 months in an operational mode, but only about 12 months at or near full production levels. The Tribunal did not begin to reach its production capacity until the Fall of 1986 when the second major group of Vice-Chair and Member appointments came on stream.

2. Administrative Highlights

(a) The Computer

In the First Report, the failure of the Tribunal's first computer system was reported and readers were advised that the development of a replacement system was under way. In the ensuing 12 months, considerable progress was made. A request for tender was developed, the tendering and evaluation process completed, and in June 1987, a contract was signed with Digital Electronics of Canada. By the end of the reporting period, the hardware had been delivered, terminals had been installed, and the process of putting the computer on-stream had begun.

The computer system selected is an office-wide integrated system utilizing centrally located mini-computers. The system supports word processing, office management systems such as electronic mail, calendars and other time management devices, and conferencing and case management.

The development of the case management system involves software customized to the special needs of the Tribunal. The Tribunal has found it necessary to involve most of its administrative staff in the process of defining the details of the case management computer protocol and has been surprised by the amount of staff time this process has required. By the end of the reporting period, for instance, we estimate about 650 person hours have so far been expended in just the formal meetings associated with this activity. It is also clear that an equal or greater number of hours will be necessary before the program is up and running. The present schedule calls for the case management system to be operational in the spring of 1988.

While the amount of staff resources required for the development of the case management system has been surprising, an important side effect is that the computer's needs in this respect have motivated a rigorous examination and refinement of the Tribunal's case management systems and procedures. The result is that the area of the Tribunal's organization and systems devoted to the management of the case flow is now especially tight and effective.

One area in which I am anticipating the computer will provide unique advantages is with respect to hearing panel caucuses and other forms of internal, Tribunal meetings. The computer's conferencing capacity may be expected to improve the efficiency of the internal meeting processes significantly and should make an important contribution to cutting back the time taken by the tripartite decision-making process.

(b) The Committee System

To improve tripartite input into the development of Tribunal administrative policies and to enlist additional management resources, the Tribunal has introduced an administrative committee system.

The committees currently consist of an Executive Committee; a Production Advisory Committee; a Tribunal Counsel Office, Practice and Procedures Committee; a Research, Publications and Library Committee; an Outreach and Training Committee; a French Language Services Committee; and a Finance and Administration Committee.

The membership of these committees typically includes Vice-Chairs, Members representative of employers and workers, and the Department Head with the primary administrative responsibility in the areas of the committee's mandate. Of particular interest is the fact that most of the committees are chaired by worker or employer Members.

The committees are responsible for approving and supervising policy developments in the area of their mandates. Department Heads report to the committees in that respect. Committee recommendations on policy matters are sent to the Executive Committee for comment and then to the Tribunal Assembly or Tribunal Chairman for final approval. (Whether final approval lies with the Chairman or the Tribunal Assembly depends on whether the subject matter falls within the Chairman's statutory prerogatives.)

Readers will not have encountered in the *First Report* any reference to the Tribunal "Assembly". This is the label now applied to the meeting of all Order-in-Council appointments and senior staff. It is typically held two or three times a month and is chaired by the Alternate Chairman. This meeting has figured prominently in the Tribunal's management processes from the beginning. It is the same meeting which has provided an ongoing forum for the review and discussion of substantive issues as well. The Assembly does not, it may be noted, make decisions on substantive, case-related issues.

The Executive Committee consists of one Vice-Chair, one worker Member, one employer Member, the Alternate Chairman, the Chairman and each of the Department Heads (General Counsel, General Manager, and the Director of Research and Publications). It is chaired by the Tribunal Chairman. It meets once a week and performs a co-ordinating role with respect to the other committees and a consultative role with respect to the Tribunal Chairman. The Executive Committee was established at the time the new committee system was introduced.

(c) Staffing

As of the end of the reporting period, the staff complement consisted of 66 regular staff, 22 contract staff, and 22 full-time Order-in-Council appointments.

The Tribunal also employs eight part-time Senior Medical Counsellors.

As will appear from the financial reports for the fiscal period ending March 30, 1987, the Tribunal continues to make extensive use of temporary help, and it is expected that this will continue until the computer is fully operational and the administrative and adjudicative processes have stabilized.

(d) No-smoking Policy

As of September 1, 1987, the Tribunal became a no-smoking work environment. The rule against smoking applies to all parts of the Tribunal's premises, including private offices, hearing rooms, reception areas, etc., and extends to parties and their representatives attending at the Tribunal.

The policy was developed by a staff committee and its implementation strategy included four-month advance notice of the implementation of the policy, and Tribunal subsidization of staff participation in programs designed to assist individuals to quit smoking.

As of the end of the reporting period, the policy had been in place for one month, and to date, there has been no indication of any resistance to the policy from any quarter.

3. The Tribunal Counsel Office

(a) The Controversy Recedes

The Tribunal's use of its own counsel in the preparation of cases and in the hearings themselves was initially regarded as an innovative step and was controversial in the Tribunal's early months. Over the course of the Tribunal's second year of existence, the controversy on this point seems to have largely disappeared as far as the Tribunal's public is concerned. It remains, however, a subject of continuing internal debate.

The disappearance of the subject from the public agenda may reflect the fact that the in-hearing appearances of Tribunal counsel have turned out to be relatively infrequent — currently, counsel appear in less than 20% of cases — and the difficult and especially controversial role of cross-questioning witnesses when testimony has not been adequately tested by others has been largely abandoned.

(b) Cross-questioning of Witnesses

The virtual abandonment by Tribunal counsel of the role of cross-questioning witnesses where questioning by party representatives has failed to test the testimony in areas of apparent weakness is a continuing subject for discussion within the Tribunal. At the present time, the role has been largely surrendered to the members of the hearing panel. While feedback from party representatives suggest that at least the representatives are more comfortable with the panel members rather than Tribunal counsel playing that role, the Tribunal Chairman, for one, has ongoing difficulty with the negative long-term implications for the adjudication process of panel members in effect accepting the responsibilities of an opposing counsel. This is an area of ongoing internal debate.

(c) General Duties

The Tribunal Counsel Office continues, of course, to be responsible for the development of the case descriptions — the initial sorting of the file, the selection of relevant documents, the summarizing of the cogent facts and the initial identification of the issues. The counsel provides generally the main point of contact between the parties and the Tribunal during the pre-hearing stages.

An increasingly important role for Tribunal counsel is the identification of potential questions concerning the sufficiency of the medical evidence in a file. That role is described in more detail in the section dealing with medical evidence.

Another responsibility of the Tribunal Counsel Office which is assuming more importance as the months go by is its duty to ensure that hearing panels are aware of particularly relevant previous decisions of other hearing panels and of the existence of conflicting previous decisions on any issue with which a panel is concerned. The goal is to maintain, as far as possible, consistency in the Tribunal's decisions so that, by and large, like facts will attract like results regardless of the particular panel the parties happen to draw.

(d) The Future

The role of the Tribunal Counsel Office and its procedures and process are still in a developmental phase, and there continue to be a range of views within the Tribunal as to what should be expected of Tribunal counsel and in particular as to how the counsel's role should relate to the Tribunal Members' role. Review and adjustment of the role is a part of the Tribunal's active planning agenda. There is no doubt, however, that the basic concept of the Tribunal having its own counsel is now accepted as an essential component of the Tribunal's design.

4. Case Direction Panels and Instruction Panels

The role of the Tribunal's Case Direction Panels in instructing Tribunal counsel deserves a word of further explanation. It is a role which, so far as I can recall, has not previously been described.

The institution of the Case Direction Panel originated in the early planning of the Tribunal's adjudication process. It is a tripartite panel of the Tribunal identical in format and membership to a Tribunal hearing panel. It is resorted to for the purpose of providing Tribunal counsel, and — where appropriate — the parties, with directions concerning the Tribunal's pre-hearing activities. These include investigations (medical and other), selection of relevant documents, pre-hearing identification of issues, and other matters of potential controversy at the pre-hearing stage. It was my view from the beginning that it was necessary that members of the Tribunal adjudicating a

particular case be isolated from the Tribunal's pre-hearing investigative and preparation activities in that case. Involvement of hearing panel members in the latter type of pre-hearing activities presents the danger of their developing a biased perspective and is contrary to the common law's traditions in that regard. A Case Direction Panel, composed of a Vice-Chairman and Worker and Employer Members of the Tribunal who are not involved in the adjudication of the case in question, is a device which permits the Tribunal to carry on its investigative role under appropriate tripartite Tribunal direction without jeopardizing its adjudicative role.

Where a Case Direction Panel is required for the purpose of giving pre-hearing directions on contentious issues, it was contemplated that the Panel's decision in that respect would be arrived at after considering submissions on the matter from interested parties — either written or oral as the circumstances indicated.

A role for Case Direction Panels which had not been originally contemplated, but which evolved early in the Tribunal's experience with the concept, was as a vehicle for private, Tribunal instructions to Tribunal counsel.

In their role as the Tribunal's representative, it is understood that Tribunal counsel cannot engage in any activity or take any step except pursuant to instructions from the Tribunal — the client. As in any counsel-client relationship, there are, of course, established instructions of a general nature — the limits of which are implicitly understood — which establish the Tribunal Counsel Office's basic mandate. It is the obligation of individual members of the Counsel Office's staff to be sensitive to the implicit limits of their general instructions and to seek supplementary particular instructions whenever they are contemplating a step or an activity which they cannot be confident is authorized by the general instructions.

The need for such special instructions arises routinely. One example is where counsel has come to the conclusion that significant, additional medical evidence is needed. Arranging for such evidence in a particular case is not activity within the ambit of a Tribunal counsel's general instructions. Accordingly, instructions in that regard must first be obtained from the Tribunal.

The need for these instructions to be private — i.e., obtained by a counsel's application to a Case Direction Panel without the involvement of the parties — arises because of logistical difficulties involved in inviting submissions from the parties in every such case when, in the majority of cases, the need for additional evidence will not be a matter of contention as far as the parties are concerned. The arrangement, therefore, is that counsel privately seeks instructions from a Case Direction Panel. If the instructions are issued, counsel then seeks the worker's co-operation and consent in this regard. If the worker or employer takes exception to such an initiative by counsel, the understanding is that the counsel then invites either party to take the issue to a Case Direction Panel (differently constituted) for further instructions. This latter application is one to which both parties would be privy and in respect of which submissions from the parties would be received.

Where Case Direction Panels are used by Tribunal counsel for the purpose of obtaining private instructions it would, in my view, be preferable to characterize them as "Instruction Panels", reserving the "Case Direction Panel" label for those occasions when the parties are involved in obtaining pre-hearing directions from the Tribunal.

Tribunal members involved in either type of panel continue to be barred from sitting on the hearing panel in the same case.

5. Outreach and Training

The Tribunal continues to recognize an institutional responsibility to assist the employer and worker communities in understanding the Tribunal's role and how things work at the Tribunal. The Chairman, Alternate Chairman, Vice-Chairmen, worker and employer Members, and staff, have all been receptive to invitations to speak to conferences and meetings or to participate in seminars and workshops. The frequency of this type of activity has been steady throughout the reporting period.

The distribution of written explanatory material continues to be a priority. By the end of the reporting period, the Tribunal had distributed (in either the English or French versions) 28,000 copies of its pamphlet entitled, *How to Appeal to the Workers' Compensation Appeals Tribunal*. It has also continued to publish a Newsletter in both French and English. Four issues were published during the reporting period. Also, as its practice and procedures have stabilized, the Tribunal has issued a series of *Practice Directions*. These, together with standard-form explanatory letters issued to the parties at various stages in the Tribunal's process, provide individual employers and workers with the "how to" information usually required.

The Tribunal also believes that it is in its institutional interest to do what it reasonably can to assist in the training of individuals who appear before the Tribunal as representatives of workers or employers. During the reporting period, the Outreach and Training Committee attempted to promote Tribunal participation in employer or worker organized training activities. Activity of this nature has been slow to develop, but as of the end of the reporting period the Tribunal was actively engaged in preparing for a full day training program for union, worker representatives which has been organized for early in October by the Canadian Auto Workers' Union. The plans

include a demonstration mock Tribunal hearing. The Office of the Employer Adviser has agreed to participate in this program through providing one of its staff in the role of employer representative.

The Tribunal is sensitive to the potential risks involved in the Tribunal participating with employer or worker organizations in training programs which in the natural order of things are designed to serve partisan goals. Care, however, is being taken to avoid any suggestion of partisan perspective in the Tribunal's approach in such programs, and all reasonable efforts will be taken to ensure that the Tribunal is involved in this type of activity as much on behalf of workers as it is on behalf of employers. In the Tribunal's view, the risks, such as they are, have to be run since at this stage in the Tribunal's development there is much that representatives of workers or employers need to know which only Tribunal Members and staff can offer.

The Tribunal's future plans in this area of training include periodic public training workshops organized and presented by the Tribunal itself.

6. Scheduling

At the end of the reporting period for the First Report, the Tribunal's strategy for arriving at hearing dates had progressed to the point where its scheduling department was establishing a mutually acceptable date through a process of prior consultation with the parties. This approach was coupled with a strict no-adjournment policy.

About mid-way through the second reporting period, it was recognized that the scheduling staff was spending an inordinate amount of time in the consultation process. Furthermore, to meet the Tribunal's hearing targets it was necessary for the scheduling staff to persuade parties' representatives to accept hearing dates they did not really find convenient. This procedure was not only time-consuming and stressful but it produced hearing dates to which one or more of the parties was not truly committed and thus put additional pressure on the Tribunal's no-adjournment policy.

The policy was, accordingly, changed. Now, when a case is ready for hearing from the Tribunal's perspective, the scheduling department contacts the parties and makes one, non-intrusive attempt to identify a mutually acceptable hearing date. If that effort is not productive — for whatever reason — then the parties are advised in writing of the Tribunal's willingness to set a hearing date and instructed to contact the Tribunal's scheduling department when they are ready. In the meantime, the case is put into a currently-non-schedulable category. If no initiative is taken by the parties, after a significant waiting period their representatives will be contacted again by the Tribunal.

In moving to this strategy, the Tribunal accepted that it would mean a reduced number of hearings in the short-term. Eventually, however, the number of hearing-ready cases waiting for scheduling would reach a critical mass large enough to routinely generate the number of hearing requests the Tribunal needs to meet its targets.

The strict, no-adjournment policy remains in force and it is the Tribunal's impression that the worker and employer representatives are gradually growing accustomed to it. The pay-off is apparent. Less than 10% of the Tribunal's hearing dates are postponed for any reason.

7. Out-of-Toronto Hearings

Through the second reporting period, the Tribunal's hearing panels continued to travel throughout the Province. At regular intervals, hearings are scheduled in Thunder Bay, Sudbury, Timmins, Ottawa, London and Windsor and have been held, in special circumstances, in other places as well. Twenty per cent of all cases heard during the reporting period were heard at out-of-Toronto locations.

8. Maintaining Uniform Standards and Consistency in Tribunal Decisions

In the 18 operational months up to the end of this reporting period the Tribunal had decided and issued one thousand, two hundred and two final decisions, employing for this purpose a total of 60 different adjudicators, sitting in panels of three. The Tribunal Chairman was the Panel Chairman in 32 cases. The balance of the hearings were chaired by 9 full-time and 19 part-time Vice-Chairs. The other members of the hearing panels consisted of 6 full-time and 7 part-time employer members and 6 full-time and 11 part-time worker members.

As indicated previously, the Tribunal is unique at this stage of its life in the high proportion of cases in which it finds itself dealing with seminal issues.

The special importance of maintaining consistency in the Tribunal's decisions and the inherent difficulty in these circumstances of achieving that goal are obvious. The Tribunal has continued to pursue the strategies in this regard described in the First Report. These include training and orientation of newly appointed Vice-Chairmen and members; continuing programs of education and discussion of emerging issues within the Tribunal generally; the activities of the Tribunal Counsel Office as previously described, and the Office of the Chairman's system for reviewing all decisions at the draft stage.

The last device, which is described in some detail in the *First Report* (page 14 and 15), is, of course, inherently

controversial from an administrative law perspective. Nevertheless, after 18 months' experience with the procedure, the Tribunal is satisfied that it does not interfere with the autonomy and independence of the hearing panels, Vice-Chairmen and Member support for the procedure is virtually unanimous, and all concerned find it impossible to imagine how, given its operational circumstances, the Tribunal could have managed without this procedure.

9. Medical Evidence

(a) *Medical Assessors and Medical Counsellors*

Section 86h of the Act provides for the establishment, through appointment by Order-in-Council, of what the statute's marginal notes refer to as a "Panel of Medical Practitioners." It is the doctors on this "panel" to whom the Tribunal may send a worker for further medical examination.

In fact, the marginal note's characterization of these doctors as a "panel" is misleading. The Act does not contemplate the doctors acting together as a panel in any respect. It is also clear that they are not intended to have any decision-making capacity. A more accurate collective description of this group of Order-in-Council appointed doctors would be that of a "roster".

For the practitioners on its 86h roster the Tribunal has also adopted the label "Medical Assessors". This label reflects generally what the Tribunal understands their intended role to be and serves, as well, to distinguish this set of doctors from the Tribunal's own "Medical Counsellors."

The Tribunal's Medical Counsellors are a group of senior specialists who have accepted part-time employment with the Tribunal and serve as wise counsel to the Tribunal in the medical area generally. Unlike the medical assessors, however, they do not examine workers nor do they give evidence or otherwise communicate with hearing panels in individual cases.

During the reporting period, the Medical Counsellors have continued to be co-ordinated by **Dr. Brian Holmes**, currently Acting Radiologist-in-Chief of the Toronto General Hospital, and formerly Professor and Chairman, Department of Radiology, Faculty of Medicine, University of Toronto and former Dean of the Faculty of Medicine, University of Toronto. Dr. Holmes was Chairman of the Ontario Council of Health from 1981-86.

In addition to Dr. Holmes, the group has comprised **Dr. Douglas P. Bryce**, formerly, Professor and Chairman, Department of Otolaryngology, University of Toronto, and Otolaryngologist-in-Chief, Toronto General Hospital. Dr. Bryce has a special interest in Laryngeal Pathology.

Dr. John Soper Crawford, currently, Acting Chairman, Department of Ophthalmology, Faculty of Medicine, University of Toronto; Professor, Department of Ophthalmology, Faculty of Medicine, University of Toronto, and formerly Ophthalmologist-in-Chief, Hospital for Sick Children.

Dr. Robert L. MacMillan, former Professor, University of Toronto, previously Senior Staff Physician and Head, Division of General Internal Medicine, Toronto General Hospital; Clinical Service Chief, 5 University Wing, Toronto General Hospital, and presently Staff Physician, Department of Internal Medicine, Toronto General Hospital.

Dr. Ian MacNab, Professor Emeritus, Department of Surgery, University of Toronto and previously Director of Research, Wellsford Research Group, Halifax, Nova Scotia; Past Chief, Division of Orthopaedic Surgery, The Wellesley Hospital, 1966-1985. Dr. MacNab has a special interest in Spinal Research and Surgery.

Dr. Thomas P. Morley, Professor Emeritus, Department of Surgery, University of Toronto; past Head, Division of Neurosurgery, Toronto General Hospital; Previous Consultant to St. Joseph's Hospital, Toronto East General Hospital, Mount Sinai Hospital, Clarke Institute of Psychiatry. Currently retired.

Dr. Neil A. Watters, Professor Emeritus, Department of Surgery, University of Toronto; Previously Head, Division of General Surgery, University of Toronto, and Surgeon-in-Chief, The Wellesley Hospital. Currently retired.

Dr. Robin Hunter was the original psychiatrist in the group. His untimely death in March 1987, left us bereft of counsel in the psychiatry area and in September 1987, **Dr. Fred Lowy**, was added to the group. Dr. Lowy is the recently retired Dean, Faculty of Medicine, University of Toronto; a former Director and Psychiatrist-in-Chief of the Clarke Institute of Psychiatry and Psychiatrist-in-Chief, Ottawa Civic Hospital; Vice President, Association of Canadian Medical Colleges, 1985-1987; Chairman, Council of Ontario Faculties of Medicine, 1985-1987; Visiting Scholar, Kennedy Institute of Ethics, Georgetown University, Washington, D.C., October to December 1987; and Member of the Bioethics Section, Institute of Medical Science, University of Toronto.

The Medical Counsellors have played a number of roles. Through an ongoing series of lectures they have helped to raise the level of the Tribunal's general medical literacy. They also advise Tribunal counsel at the case preparation stage concerning the sufficiency of the medical evidence in particular files.

In the course of preparing a Case Description, when Tribunal counsel concludes that the medical evidence is especially complicated or is left wondering whether there might not be further medical investigation required, he or she now sends the file to the appropriate Medical Counsellor for review. The Counsellor advises the Counsel Office as to whether or not he thinks the evidence is sufficient and, if it is not, what other avenues of investigation ought, in his view, to be explored. If the Counsellor recommends further investigation, then the Tribunal counsel takes that recommendation to a Case Direction Panel — really an Instruction Panel (see above) — for instructions in that respect. The Medical Counsellor will frequently attend with counsel at the meeting with the Instruction Panel.

The Counsellors have also been of great assistance in the Tribunal's recruitment of candidates for appointment as Medical Assessors and in advising the Tribunal Chairman generally with respect to medical profession protocol including, most importantly, advice on the question of appropriate fees for the Medical Assessors.

The role of the Medical Counsellor continues to develop and is subject to ongoing review.

(b) *Appointment of Medical Assessors*

The recruitment and appointment of the Medical Assessors under the provisions of section 86h has proven to be a long and complex affair. The section requires that the Lieutenant Governor in Council make the appointments after "requesting and considering the views of representatives of employers, workers and physicians." The procedure that has emerged to comply with this requirement is as follows.

The members of the Tribunal's Advisory Group (described in the First Report at page 7) were adopted as the "representatives of employers and workers" for this purpose. And because of their seniority and eminence within the medical profession, the Tribunal's Medical Counsellors were considered to be the representatives of physicians for this purpose.

The members of the Advisory Group were invited to suggest the names of appropriate candidates and the Medical Counsellors were also consulted in this respect. They in turn consulted other colleagues within the profession. Names suggested by the Advisory Group or which came to my attention from other sources were reviewed with the Medical Counsellors.

A tentative list of potential candidates was developed in this fashion. The individuals on that list were then approached to see if they would be interested in allowing their names to be entered in the approval process. The help of the Medical Counsellors was often enlisted in this recruitment process.

Once approval had been obtained from a number of such candidates, a list was prepared with attached résumés. The list and résumés were then circulated to the Advisory Group and the members of that group were invited to indicate whether they had any concerns or reservations about the appointment of any of the doctors listed. The names, along with my recommendation and any Advisory Group adverse comments or questions, were then submitted to the Minister of Labour for his approval and submission to the Lieutenant Governor in Council.

This process led finally to the appointment of an initial short list of assessors in May 1987.

The development of a second, expanded list has been under way for a long time, and it is expected that a list of proposed candidates will not be ready for review by members of the Advisory Group until early in the new year. In this second list, the Tribunal has been attempting to ensure an appropriate geographical, ethnic and gender mix amongst the Assessors. Because the Tribunal is also committed to confining the list as much as possible to senior practitioners in the various specialties, the current demographics of the medical profession in Ontario has made the selection process particularly difficult. While the co-operation the Tribunal has received from the medical profession generally has been all that one would have hoped for, there are some areas of the profession and some areas of the province in which the Tribunal has encountered some general reluctance to be involved.

10. Caseload Performance

(a) *Definition of Terms*

In analyzing the Tribunal's caseload performance in its first 12 months, the *First Report* found it necessary to define some terms. Those definitions are still pertinent and bear repeating.

The Tribunal's *caseload* consists of its *workload* plus its *backlog*. The *workload* is the work progressing as planned, the *backlog* is the work which is not progressing as planned. It is the backlog which represents the extent of a tribunal's failure to reach or maintain its production plan.

(b) *The Pre-Hearing Stage*

As mentioned in Section F above, experience has required the Tribunal to adjust its production goals. In the pre-hearing stage where we once thought it would be reasonable to process even significant entitlement and quantum cases in not more than four months except in truly exceptional cases, we now know that the appropriate figure is not

four months but five to six months. See page 24 above where the various pre-hearing stages are defined and the time required for each is indicated.

I am not resigned to the Tribunal never being able to reduce its pre-hearing cycle to the original four-month goal, or less, but I am satisfied that until the impact of the new computerized case management system is known and the Tribunal Counsel Office's role settled, five to six months must be seen to be necessary. As mentioned previously, a chunk of this time is attributable to what is required for the convenience of the parties and their representatives.

There are, of course, categories of cases, such as section 77 Appeals and section 21 Applications, in which the pre-hearing cycle is much less — in the order of six weeks to two months. There are also particularly simple entitlement and quantum cases in which the actual pre-hearing process will in fact be completed in two or three months.

It should also be emphasized that the pre-hearing cycle is measured from notice of appeal to the first hearing date. On this cycle, if the parties are ready, the *setting* of the hearing date will typically occur within three months of the Tribunal receiving the notice of the appeal.

Each week the Tribunal now produces a weekly workload analysis. The analysis as of the end of the reporting period — the week ending October 2, 1987 — is attached as *Appendix C* (Blue) to this report. That analysis shows that at the end of the week, the Tribunal's total active pre-hearing workload stood at 1,002 cases. These are all the cases at various stages in the pre-hearing process which are, generally speaking, available to be worked on. This does include some enforced sitting time. For example, the analysis shows that at the end of that week there were 38 cases in the two-week waiting period between the sending of the case descriptions to the parties and contacting them about a hearing date, and there were 201 cases in which the hearing had been scheduled and the cases were simply waiting for the date to arrive.

The active pre-hearing workload does not, of course, include those cases which are not available to be worked on, but which are on hold for some reason beyond the Tribunal staff's control. As of the week ending October 2, cases of this kind totalled 564 of which 391 were pension cases. (As previously indicated, as of the end of the reporting period pension cases were experiencing a further short-term hold while the Board and the Tribunal worked out certain jurisdictional problems related to the Board's enactment of its new chronic pain policy.)

While the question of what the normal pre-hearing workload consists of is open to considerable interpretation, it appears that in the pre-hearing part of its operation the 1,002 cases indicated in the Appendix C Weekly Workload Analysis represents approximately the normal workload in that part of the Tribunal's operations. Thus, in the Tribunal's opinion, as previously indicated, there is no backlog problem in the pre-hearing part of the operation.

This situation will change again when the short-term hold on the pension cases is lifted. Thus there will be a portion of the Tribunal's third year during which a backlog will exist at the pre-hearing stage. However, barring some truly unforeseen increases in the incoming caseload, backlog is not now a matter of serious concern in the pre-hearing part of the process.

(c) The Post-Hearing Backlog Problem

The backlog problem now lies, as was indicated previously, at the post-hearing, decision-making stage. It is a problem which has proved impervious to a variety of strategies and represents by a long measure the Tribunal's most important single ongoing problem.

It is also a problem that is rooted in the nature of the Tribunal's role as a new adjudicative agency in an operationally mature area of activity. Since the Tribunal's experience in this regard seems likely to be of general interest from an administrative law point of view, and of some value to future agencies similarly fixed, I have devoted some considerable space in this report to analyzing the sources of this problem.

As with the pre-hearing operations, it is important in understanding and assessing the backlog problem in the post-hearing stage to start with a realistic picture of the *normal* workload.

On September 21, 1987, I presented a major report to the Tribunal on the decision-making backlog. In that report, I attempted a detailed assessment of what the post-hearing workload would be if everything were going well. Defining what the normal, overall workload in this phase of the Tribunal's operations actually is, is not a straight forward matter and there had been no previous attempt to describe it.

My assessment in this regard was based on certain estimates as to the proportion of cases which will fall into various categories of workload following the first hearing, and as to the time required for cases in those categories to progress through the various post-hearing processes when everything is going well. The estimates are based on the Tribunal's experience to date and are consistent with the statistical records in this area such as they are. It is important to appreciate, however, that there is a large element of educated guess-work in these estimates. The estimates will be of particular interest to the Tribunal's constituencies because they do confirm the slippage relative to the original two-month post-hearing goal previously mentioned. A summary of those estimates is as follows:

1. Of every *ten* cases in which the first hearing day is completed, *seven* will require no further hearings and will emerge from the first post-hearing panel caucus (which typically occurs immediately following the hearing) ready to write; *two* will require further submissions or investigations (typically medical), and *one* will have been recessed for continuation of the hearing.
2. For cases in the hands of full-time Vice-Chairs, of the *seven* ready to write, *five* can be decided, written and issued within two months; *one* will take three months, and *one* will take four months.
3. For cases in the hands of part-time Vice-Chairs, of the *seven* ready to write, all will take three months to decide, write and issue. This different estimate for part-time Vice-Chairs reflects the fact that, on the one hand, the Chairman tends to assign less difficult cases to panels chaired by part-time Vice-Chairs but on the other that the processing time is inevitably longer because the part-time Vice-Chairs are not resident in-house.
4. For full-time Vice-Chairs, of the *two* cases requiring further submissions or investigations each will take, on average, three months to complete the submissions or investigations and a further two months to decide, write and issue.
5. The part-time experience with respect to this latter type of case ought to be about the same as the full-time experience.
6. For both full-time and part-time Vice-Chairs, the *one* case which is recessed to another hearing day, will require three months in which to arrange another hearing date and a further four months to then decide, write and issue the decision. The extra deciding and writing time reflects the fact that a case which cannot be disposed of completely in the time allotted on the first hearing date is likely to be especially complicated.

The full-time Vice-Chairs are scheduled to a target of three hearings a week. Currently, when other responsibilities and vacations and holidays, etc., are taken into account, this weekly target actually produces approximately 2.5 new cases for each Vice-Chair to decide in each of the 52 weeks of the year.

When, on the basis of the foregoing estimates, one traces the build-up of a full-time Vice-Chair's workload over time — charting, as each month goes by, the additions to the various categories, the movement between categories and the decisions issued each month — the steady-state profile of a typical workload for a Vice-Chair looks, at the end of any particular month, like this:

1. Decisions to be written over the next two months	16
2. Decisions to be written over the next three months	4
3. Decisions to be written over the next four months	9
4. Cases in the Hearing Complete but on Hold category	8
5. Cases in the Recessed to another date category	5
TOTAL	42

Assuming that the Tribunal is operating with its full complement of ten full-time Vice-Chairs (one appointment was still pending at the end of the reporting period), the total normal workload for the full-time Vice-Chairs would be 420 cases. A similar analysis for the part-time Vice-Chairs as a group — assuming that they will as a group be dealing with approximately 40 cases a month — indicates the normal workload for the group at the end of any particular month would be 152 cases. Thus, the total normal post-hearing steady-state workload for the Tribunal overall would be approximately 570 cases.

The latter estimate is based on an operating level of 140 *hearings* per month. However, during the last eight months of the reporting period — the period of time over which the bulk of the current workload may be taken to have built up — the Tribunal averaged 125 hearings a month. Accordingly, the normal workload against which the present total caseload is to be compared for the purpose of determining the size of what can be fairly characterized as the post-hearing backlog, must be proportionately reduced. Thus, if the Tribunal were producing in the post-hearing phase at a normal production level, the workload that one would have expected to find at the end of the period — relative to the actual experience with the hearing rate over the preceding eight months — would be approximately 500 cases.

The actual, total post-hearing caseload at the end of the reporting period was 758 cases. Accordingly, as of the end of the reporting period, the Tribunal was suffering from a post-hearing backlog of 258 cases. That backlog is to be found in the slippage of the actual experience against the normal times in each phase of the post-hearing processes as estimated above, but is most prominent with respect to cases in the ready-to-write category.

The backlog measurement which is, of course, of most significance is the extent of the delays which have been visited upon individual workers and employers. The problem presents itself graphically in the Graph of Input and Output Trends attached as Appendix D (Orange).

For the total period of the Tribunal's existence, the average time between the end of the hearing and the issuing of interim and final decisions was 3.7 months. Broken down by category of cases the average times are as follows:

Section 15 Application (to prohibit Civil law suits)	— 33	decisions	4.5	months.
Leave-to-Appeal Applications (86o)	— 165	decisions	2.7	months.
Objections to Employer-arranged Medical examinations (s. 21)	— 20	decisions	3.8	months.
Appeals re Access to workers' files (s. 77)	— 218	decisions	2.8	months.
Entitlement, Quantum and others	— 842	decisions	4.1	months.
Total final and interim decisions issued:	— 1278	overall average	3.7	months.

It may be noted in this respect that it is in the last category — Entitlement, Quantum and Others — where the bulk of the major cases are to be found. There, also, are most of the cases which required post-hearing submissions or investigations as well as those which had to be recessed. The average time indicated in that category includes the time required for these extra post-hearing activities. Since approximately 20 per cent of the Tribunal's total cases have led to post-hearing activities of one kind or another and another 10 per cent are recessed to a second hearing date, and most of the cases of both types are to be found in the entitlement quantum category, it is fair to conclude that the actual average time between the point at which the cases in this category were actually ready to write and the date they were issued would be somewhat less than the 4.1 months shown.

The Tribunal believes the time taken to make the decisions that have been actually issued is, on average, reasonably acceptable under all the circumstances.

The reader will appreciate, however, that while those numbers may indicate a fairly reasonable level of performance as far as the decisions which have been issued are concerned, they do not deal with the cases where decisions have not yet been issued. And, of course, it is here where the true problem lies. As indicated in the Chairman's Overview, at the end of the reporting period the Tribunal had on its books 207 cases in which the hearings had been complete six months without a decision issuing, and of these 47 had been complete for over 12 months.

There are several factors which have contributed to this problem, but as previously indicated, the major influence in this regard has been the nearly catastrophic nature of the issue overload.

The problem has been addressed through a series of strategies that were not successful but, in September, steps were taken which I expect will solve this problem by some time early in the new year.

These are as follows:

First, it was agreed that any Vice-Chair with a significant backlog of decisions would not be assigned to any further cases until his or her backlog had been resolved. This meant a significant transfer of resources from hearing cases to only deciding cases and a reduction in the short run of the Tribunal's capacity to hear cases.

Second, drafts and other decision-related documentation pertaining to backlogged cases were assigned overriding priority in the work of the word processing centre, secretaries and worker and employer Members.

Third, part-time Vice-Chairs with intractable backlogs were urged to schedule blocks of writing time into their future schedules and to plan to take up residence in the Tribunal during that writing time, close to the worker and employer Members with whom they would have to be working with respect to those decisions and adjacent to the administrative and other back-up services that they would require.

Fourth, a formal, structured control system was initiated designed to routinely track the progress of all cases at the decision-making stage and to identify cases at the point where they start to depart from the expected track. The system is designed to assist Vice-Chairs to identify and to confront at an early stage cases with which they are having special difficulty and to ensure that whatever additional help or back-up with respect to such cases is needed, is provided. The goal of this control system is to ensure that inordinate delays in the issuing of any decision occur only when they are not reasonably avoidable and only as a result of deliberate choices justified by well-understood reasons.

Finally, steps were taken to fill the one remaining full-time Vice-Chairman position and to add another four, part-time Vice-Chairmen. This was done in order to provide some balance against the transfer of existing Vice-Chair resources out of the hearing schedule and in anticipation of the possibility that a long-term solution may require some permanent reduction in the full-time, Vice-Chairs' hearing schedules.

(d) *The incoming caseload*

During the reporting period, the Appeals Tribunal received a total of 1,854 new cases. The breakdown amongst the various categories of cases and the chronological analysis may be seen in the tables and charts in *Appendix E* (Grey) attached.

(e) *The Tribunal's production*

During the same period, the Tribunal held hearings in 1,373 cases, and disposed of 1,505 cases — 553 cases disposed of without a hearing and a total of 952 final decisions issued after a hearing. The breakdowns and the production experience in chronological terms may be seen in the tables, charts and graphs in *Appendix F* (Red), attached.

11. Decision No. 915

Decision No. 915 was the culmination of the Tribunal's pension assessment appeals leading case strategy. It was released on May 22, 1987, following 24 days of evidence and three days of submissions from two parties, eight intervenors, and WCB and the Tribunal's counsel. The evidence included substantial testimony from senior Board officials as to the Board's policies, procedures and practice and extensive medical evidence on the subject of chronic pain.

The decision was summarized by the hearing panel itself in the following terms:²

- The Panel agrees with the Board's interpretation of section 45 and, while it identifies possible problems with the Board's Rating Schedule, it finds that on the evidence in this case the Rating Schedule meets the requirements of the Act.
- The Panel finds disabling Chronic Pain conditions which develop from industrial injuries to be generally compensable in principle, subject to genuineness and adequate motivation.
- The Panel recognizes that the Board does not presently compensate for chronic pain and that a change in that policy will involve the development of a new Board chronic pain assessment strategy and assessment expertise.
- The Panel proposes an interim Tribunal chronic pain assessment strategy for pension appeals received in the meantime, subject to subsequent reconsideration once the Board's chronic pain assessment policies are in place.
- The Panel identifies the need for an early treatment and return to work strategy for incipient chronic pain cases (similar to what the Board is currently developing) which will require improved union and employer co-operation in accommodating disabled workers in the work-place.
- In the particular case, the Panel concludes that the worker is suffering from a back and leg disability. The disability is caused by a permanent lower back organic lesion complicated by chronic pain magnification associated with a Psychogenic Pain Disorder.
- Contrary to the Board's assessment which was based on the organic element only, the Panel finds that both elements of the disability result from the industrial accident and are compensable.
- The Panel rates the worker's pension level by estimating the best-fit of his total disability with the bench-mark disabilities in the Board's Rating Schedule.
- After considering evidence of symptom exaggeration and adjusting for minor undermotivation, the Panel rates the pension level at 25%. The Board's rating was 15%.
- The Panel reserves on the difficult question of retroactive payments and on that issue invites further submissions.
- As previously arranged with the parties, the SIEF issue of possible transfer of responsibility for costs from the employer to the Accident Fund generally is to be the subject of reconvened hearings.

The hearing of submissions from the parties and intervenors on the retroactivity issue — the issue reserved for further consideration — is scheduled for October 1987.

12. The Library

The Tribunal is particularly proud of its Library. The character of the Library as it has developed and the use it is attracting — both internally and from the Tribunal's various constituencies — are described below. This is a resource which in my view is indispensable in dealing with workers' compensation issues on an adequately informed basis and is one which has not previously been readily available — at least not in Ontario.

Over the past year, the Tribunal Library has settled into its permanent quarters. The Library collection now stands at about 2,500 books and reports (102 journal titles). The collection has been catalogued using the UTLAS

² Decision 915, Point-Form Synopsis.

cataloguing system. The Library staff scans publishers' reports, journals, conference proceedings, newspapers, on-line information retrieval systems and other library bulletins for items of interest to library users related to advocating and adjudicating workers' compensation cases. Special efforts have been made to acquire material of historical interest.

The Library has adopted an acquisition policy which attempts to strike a balance between ownership of material and bibliographic awareness. Through the book and report collection and the journals and vertical files, research can be started in areas related to administrative and constitutional law, to workers' compensation law or policy, or to the medical issues related to cases before the Tribunal. The collection is supplemented by access to on-line information retrieval, library resources in the community and current awareness services.

The Library serves the Appeals Tribunal's Members and staff and employer or worker representatives, lawyers, injured workers and others involved in or interested in workers' compensation. Full service hours in the Library are 9 a.m. to 5 p.m., Monday to Friday.

During the reporting period the Library staff:

- added 1,700 records to the vertical file database. A selected list of new articles is circulated monthly to Tribunal staff and to the public on request (720 photocopies were made of articles on these lists).
- upgraded the software used to search the WCAT DECISIONS DATABASE providing for keyword, panel, section number, date range and text word searches. Library staff has trained both WCAT staff and the public on use of this database and has filled both phone and in-person requests for searches (200 since April). A copy of this database has been sent to the Canadian centre for Occupational Health and Safety and will be used as the basis of a WCAT decisions database on their information retrieval system — CCINFO.
- started a database of workers' compensation appeals decisions of other jurisdictions, e.g., Quebec, New Zealand, Manitoba.
- expanded the Library current awareness service to include tables of contents of journals received in the Library and recent court decisions. Current-awareness computer searches of several information retrieval systems are done monthly in the coming year will include User Designed Profiles.
- organized the Library collection of Canadian, U.S. and British court cases dealing with workers' compensation issues.
- answered numerous reference queries from the staff and the public. (Statistics have been kept since April and 513 queries were received.)

The Library provides staff with access to on-line information retrieval systems on request and has done 135 searches to date. Interlibrary loans and photocopies resulting from these searches and other research total 1,195. To speed interlibrary loan requests, the Library staff uses electronic mail or on-line order services. Library staff routinely visit nearby libraries to keep up with the demand for photocopies of research material.

13. Publications

During the reporting period, the Research and Publications Department continued to index and summarize the decisions of the Tribunal. Decisions are available individually at a cost of \$2.00 (approximately 500 decisions were requested during the year) or through the Decision Subscription Service which includes all significant decisions. The Decision Subscription Service presently has a subscriber list of 450. Significant decisions are summarized and the summary (or outline) is attached to the full text. This outline serves to call attention to the significant legal, medical or factual details of the decision.

Various indices are available: the keyword index, the numerical index, the Section 15 index and the annotated statute. These are available to subscribers or on request. Creation of the annotated statute and the numerical index has been facilitated by the use of data management software — CARDBOX PLUS. It is anticipated in the coming year that these indexes will be produced monthly and will be up to date within a month of current material.

To further enhance research of the Tribunal's published decisions, a full text search service is planned through Infomart Information Management Group, using BASIS software for search and retrieval of decisions. Availability of this database to the Members and staff of the Tribunal and to the public is planned for 1988.

The first volume of the Tribunal's *Compensation Appeals Forum* appeared in October 1986. The Forum has been designed to provide a forum for a public exchange of views on Tribunal decisions, its practice and procedure, etc. The first volume contained articles on the history of the Tribunal, the role of the Tribunal counsel, and the Tribunal's handling of the chronic pain issue in *Decision Nos. 9 and 50*. Contributors included a Tribunal staff member, a worker representative and an employer representative. Volume 2(1) was also published and continued to reflect in its contents the tripartite character of the Tribunal. Volume 2(2) is scheduled for publication in October

1987. An issue devoted to the topic of causation in workers' compensation is planned in the coming year. A general call for papers has been issued. Copies of the journal are circulated free of charge.

The publication of the Workers' Compensation Appeals Tribunal *Reporter* was postponed. It is now projected that the first volume will be available in January 1988. This *Reporter* will be published for the Tribunal by Carswell Legal Publications. Subscription price will be \$40 per year to new subscribers and \$20 per year to current subscribers of the Decision Subscription Service.

The Tribunal continued to publish and distribute a Newsletter containing schedules of out-of-Toronto hearings, information about appointments to the Tribunal, updates on research, library and publications resources and other items of interest.

14. French-Language Services/Training

The Tribunal continued during the past year to increase its ability to provide services in the French language. A three-year plan was prepared to enable the Tribunal to implement the *French Language Services Act*. The plan provides a program to acquire additional staff and to achieve a high level of response to the requirements of employers and workers appearing before the Tribunal who wish to use the French language. Certain programs are already in place to provide a bilingual capacity.

The Tribunal policy and direction for French language results is directed by the French Language Services Committee comprised of Members representative of Employers and Workers, Vice-Chairmen and senior staff.

During the past year the Tribunal translated 32 documents into French, including the "Outline" of *Decision No. 915*. Also, the Chairman's *First Report* was translated into French and has received wide distribution. Every effort has been made to provide bilingual signage throughout the Appeals Tribunal with emphasis in the reception area, the library and the hearing rooms.

It is also important to note that two Vice-Chairs and two panel members are fluent in French. This resource enables the Tribunal to schedule bilingual panels. To date two French-language hearings were planned, with bilingual panels and simultaneous translation. These hearings were withdrawn or adjourned for matters unrelated to the conduct in the French language. Also, bilingual panel members meet daily to discuss issues related to the hearings to maintain their fluency level.

The Tribunal is updating the French/English lexicon or glossary which serves as an authoritative reference to assist with the translation of decisions and related material.

The opportunity for employees at the Appeals Tribunal to enrol in French-language training courses is encouraged. The Tribunal, through the assistance of the Ontario Institute for Studies in Education and the Human Resources Secretariat, has provided French-language training to four levels, including introductory, intermediate, advanced and superior. The following is a summary of interest and attendance at French language training:

— January/March 1987	— 41 employees
— March/June 1987	— 19 employees
— July/September 1987	— 7 employees

15. Representation at Hearings

The Tribunal's experience during the reporting period with respect to the qualifications of the individuals appearing as representatives of workers or employers may be judged from the worker and employer representation profiles set out in *Appendix G* (Purple), attached.

The Tribunal's experience with so-called para-professionals engaged in the business of appearing before the Tribunal on behalf of one or other of the parties for a fee is, as *Appendix G* will show, limited. It is, however, very uneven. Some "consultants" are highly professional and exceptionally competent. Others are doing a disservice to their clients.

The Tribunal has had a number of occasions to contemplate what duty it might have to bring neglect, ignorance or incompetence of representatives to the attention of their clients or to some other authority. It has, however, always concluded that such intervention was inappropriate for an adjudicative tribunal.

The Tribunal's experience in this regard indicates a need for public institutional arrangements for the training and supervision of professional representatives.

I. THE TRIBUNAL'S RECONSIDERATION POWER — THEORY AND PROCEDURE

By the terms of sections 86m and 76 of the Workers' Compensation Act, the Tribunal's powers of reconsideration read as follows:

The Tribunal may, at any time if it considers it advisable to do so, reconsider any decision, order, declaration or ruling made by it and vary, amend or revoke such decision, order declaration or ruling.

During the reporting period, the Tribunal had occasion to consider a substantial number of applications for reconsideration of its decisions and to develop policies concerning the use of this discretionary power. Practice Direction 8 spells out the Tribunal's procedural approach to such applications and *Decisions No. 72R* and *72R2* are decisions in which the Tribunal's substantive approach was first articulated.

The Tribunal's basic position with respect to applications for reconsideration is that from the public interest perspective the importance of the Tribunal's decisions being — and being seen to be — final, is paramount and, accordingly, decisions should not be susceptible to being re-opened except in exceptional circumstances. The Tribunal also considers that section 76 defines a power which is highly discretionary and that embarking on a serious consideration of whether or not to resort to it in a particular case is also a discretionary activity which is not automatically invoked merely by a party's application.

When an application for reconsideration is received, I make an initial decision as to whether there is sufficient potential substance in the submissions in support of the application to warrant my establishing a panel to consider it. This exercise of the Chairman's discretion under section 86e of the Act screens out those applications where it is apparent that the applicant is merely seeking to have the Tribunal consider his or her case a second time.

Applications alleging error or missed evidence or new evidence or any matter that is arguably not without at least potential substance, I refer to a panel of the Tribunal which I establish for the purpose of reviewing the application in question. The Panel so established is usually — but not always — the hearing panel which heard and decided the case in the first instance.

The question I refer to the review panel at this point is only whether the written submissions accompanying the application for reconsideration present — on their face — a serious enough case, relative to the Tribunal's criteria for embarking on a reconsideration, to require that the other party or parties in the case be given an opportunity to respond to the application. The response in question is, in the first instance, with respect to the issue as to whether or not the application has met the Tribunal's criteria for re-opening a case and embarking on a reconsideration. If the panel does not believe there is sufficient merit to the application to require it to hear such submissions in response, I will be so advised, and will thereupon advise the applicant that his or her application has been rejected.

If, on the issue as to whether or not a reconsideration should be embarked upon, the panel concludes that the application has sufficient merit to warrant inviting the other party or parties to respond on that issue, then a copy of the application is sent to the other party and submissions are requested. Normally, this preliminary issue would be decided on the basis of written submissions only, although the panel could elect to proceed to a hearing. Upon receipt of such submissions, the panel then decides whether or not the application has satisfied the Tribunal's criteria for re-opening a decision and embarking on the reconsideration authorized by section 76.

If the panel decides the criteria has been met, it advises me to that effect and I then establish a Tribunal panel for the purpose of conducting the reconsideration and determining whether the decision should be “varied or amended” — and, if so, how — or whether it should be “revoked” and, if it should be “revoked” what if anything should be done in the light of the revocation. Here, again, it would be usual to establish for this purpose the same panel which had heard and decided the case in the first instance. However, a differently constituted panel could also be appointed. Before deciding the application for reconsideration on its merits, the appointed panel would hold a hearing.

The Tribunal also reserves to itself the right to undertake a reconsideration on its own initiative. To date this has happened on one occasion.

I have found a pervasive tendency, amongst parties and their representatives, and within the Tribunal itself, to ignore the distinction between the decision to embark upon a reconsideration — that is, the decision to exercise the section 76 powers — and the decision to be taken at the end of such a reconsideration as to whether or not to confirm, vary, amend or revoke the original decision. The distinction is, however, one which must be maintained if the Tribunal is to keep control of its processes in this regard. Whether or not to embark on a reconsideration is a very different issue from whether or not to confirm, vary, amend or revoke after the reconsideration has been completed. Careful development of appropriate criteria for the determination of this threshold issue is required if the concept of the Tribunal's decisions as final decisions is to have real substance.

J. 1986 CHALLENGES REVIEWED

In the *First Report* (at page 23), the Chairman listed a number of particular challenges which as of the end of September 1986 the Tribunal still had to meet. A review of how the Tribunal stands with respect to each of those challenges as of the end of September 1987, would seem to be indicated.

1. Demonstrating that the Tribunal is capable of disposing of 215 cases a month

As indicated above, the resources as planned in 1986 proved unable to produce at this level. A year-long average monthly production capacity of 160 to 170 cases appears to be the Tribunal's limit based on current resources.

2. Installing a major integrated computer system successfully

By the end of September 1987, this project, while not completed, was well in hand.

3. Delivering a sound decision in the Pensions Appeals Leading Case

The extent to which this challenge was met is obviously a matter of some controversy within the Tribunal's various constituencies. The Tribunal is satisfied, however, that this goal was achieved.

4. Effecting the transfer from the scrambling style of management necessitated in the Tribunal's formative months to a professional day-to-day management

The Chairman is satisfied that the day-to-day management of the Tribunal's affairs is professional, competent and effective.

5. Reducing the time it takes to issue a decision after the hearing is complete

This is a challenge the Tribunal has so far clearly been unable to meet. See the lengthy discussion of this problem above.

6. The training of workers and employers in the Tribunal's procedures and process

The worker and employer communities were slow to respond to the Tribunal's interest in this area. However, as indicated above, some progress in this area is now beginning to be seen.

7. Providing hearings in the French language

See in this respect the report concerning French Language Services generally at page 28, above.

8. Appointment of a French-speaking member representative of workers

This was accomplished in May 1987. See above at page 28.

9. French Language services generally

See above.

K. FINANCIAL STATEMENTS

Financial statements for the Tribunal's second fiscal period (April 1, 1986 to March 30, 1987) are attached as *Appendix H* (Brown). They consist of a Summary Statement of Expenditures and a detailed Statement of Expenditures.

The budget against which the expenditures are compared in these statements was prepared for the Minister's approval in December 1985 — three months after the Tribunal came into existence. The variances between budget and expenditures are significant but under the circumstances not surprising. The net underexpenditure of 2.6 million dollars reflects primarily the facts that anticipated operating levels were not reached as quickly as anticipated and the capital expenditure on the computer system was not required during this fiscal period for reasons that have been explained elsewhere. (See the First Report).

All of which is respectively submitted, at Toronto, Ontario, as of September 30, 1987.

S.R. Ellis
Chairman

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX A

TRIBUNAL MEMBERS ACTIVE DURING THE REPORTING PERIOD

THE MEMBERS OF THE TRIBUNAL

Chairman

S. Ronald Ellis

Mr. Ellis is the Tribunal's first Chairman. He assumed office on October 1, 1985. Mr. Ellis, who trained and practised as an engineer before going to law school, was formerly a partner in the Toronto law firm of Osler, Hoskin & Harcourt. More recently, he was a faculty member at Osgoode Hall Law School where he was Director and then Faculty Director of Parkdale Community Legal Services. He came to the Tribunal from his position as Director of Education and head of the Bar Admission Course for the Law Society of Upper Canada. In addition, Mr. Ellis has significant experience as a labour arbitrator.

Alternate Chairman

James R. Thomas

Mr. Thomas was appointed to the Tribunal as a Vice-Chairman, effective October 1, 1985, and was assigned by the Chairman to the position of Alternate Chairman. A lawyer with a degree in electrical engineering, Mr. Thomas worked with Canadian General Electric before entering the legal profession. His experience with C.G.E. included six years in managerial positions at one of its manufacturing facilities. He was called to the Bar in 1983. Prior to joining the Tribunal, he had extensive involvement with workers' compensation matters, both through his law practice and his work with community clinics. The position of Alternate Chairman is not one that is defined by the Tribunal's legislation. It is a management position created by the Chairman as a means of sharing the administrative and management load that devolves on the Chairman's Office. The title was chosen to reflect the senior nature of the position and the fact that the incumbent is also the Vice-Chairman appointed by the Chairman — pursuant to provisions in the legislation in that respect — to act in place of the Chairman in the event of the Chairman's absence from the Province or his inability to act. The Alternate Chairman, like the Chairman, has both a management and an adjudicative role.

Full-time Vice-Chairmen

Laura Bradbury

Ms. Bradbury was appointed to the Tribunal effective October 1, 1985. Called to the Bar in 1979, she acted as counsel for injured workers and, for the two years prior to her appointment, was an investigator with the Office of the Ombudsman.

Nicolette Catton

Ms. Catton was appointed to the Tribunal effective October 1, 1985. A graduate in sociology, she was with the Office of the Ombudsman for nine years prior to her appointment. From 1978 to 1985, she was in charge of the Ombudsman's Workers' Compensation Directorate.

Maureen Kenny

Ms. Kenny was appointed to the Tribunal effective July 30, 1987. She was called to the Bar of Ontario in 1979. Following a period of private practice in the field of labour law, Ms. Kenny joined the (Ontario) Ministry of Labour as a policy analyst. She came to the Tribunal originally in October 1985, in the position of Counsel to the Chairman.

Faye W. McIntosh-Janis

Ms. McIntosh-Janis was appointed to the Tribunal effective May 14, 1986. She was called to the Bar of Ontario in 1978, and was a full-time member of the Research Department at Osler, Hoskin & Harcourt for six years. She comes to the Tribunal from the position of Senior Solicitor with the Ontario Labour Relations Board.

Elaine Newman

Ms. Newman was appointed to the Tribunal effective July 9, 1986. Called to the Bar in 1979, Ms. Newman was previously senior staff lawyer with the Advocacy Resource Centre for the Handicapped in Toronto. She joined the Tribunal originally in October 1985, in the position of senior lawyer in the Tribunal's Counsel Office.

Kathleen O'Neil

Ms. O'Neil was appointed to the Tribunal effective January 22, 1986. She was a lawyer with the Ontario Nurses' Association, and with the Federation of Women Teachers' Association. Prior to her appointment, she practised with the firm of Symes, Kitley & McIntyre. She has also chaired the Justice Committee of the National Action Committee on the Status of Women.

Antonio Signoroni

Mr. Signoroni was appointed to the Tribunal effective October 1, 1985. A practising lawyer since 1982, Mr. Signoroni had ten years experience as a part-time chairman to the Board of Referees of the Unemployment Insurance Commission. Before entering the legal profession he was involved extensively with service to the Italian community. He was a Trustee on the Metro Separate School Board from 1980 to 1982.

Ian J. Strachan

Mr. Strachan was appointed to the Tribunal effective October 1, 1985. Called to the Bar in 1971, Mr. Strachan's law practice involved advising small businesses with respect to a variety of commercial matters and employee-related issue. He has also served as a director of the Canadian Organization of Small Business.

Members Representative of Employers and Workers: Full-Time

Robert Apsey

Mr. Apsey was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He held a number of responsible positions at Reed Stenhouse during his 25 years with that firm until his early retirement in 1983, as a Vice-Chairman of the Board and Senior Vice-President.

Brian Cook

Mr. Cook was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. A graduate of the University of Toronto, Mr. Cook was a community legal worker with the Industrial Accident Victims Group of Ontario for five years.

Sam Fox

Mr. Fox was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. A past president of the Labour Council of Metropolitan Toronto, Mr. Fox is a former Co-Director and International Vice-President of Amalgamated Clothing and Textile Workers Union.

Karen Guillemette

Ms. Guillemette was appointed to the Tribunal as a Member representative of employers effective July 2, 1986. Ms. Guillemette has been the Administrator of Occupational Health at Kidd Creek Mines Limited in Timmins, and has been an active member of the Ontario Mining Association. Prior to her position as Administrator, she was the Industrial Nurse at Kidd Creek Mines.

Lorne Heard

Mr. Heard was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. With more than 30 years of experience in workers' compensation matters, Mr. Heard came to the Tribunal from a 13-year career with the United Steelworkers of America where he had national responsibility for occupational health and safety, and workers' compensation.

W. Douglas Jago

Mr. Jago was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. Mr. Jago had been Managing Director of Brantford Mechanical Ltd., and President and principal owner of W.D. Jago Ltd., both mechanical contracting concerns. He was an active member of the Mechanical Contractor's Association.

Frances L. Lankin

Ms. Lankin was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. For five years prior to her appointment, she was the Research/Education Officer for the Ontario Public Service Employees Union. She was also that union's equal opportunities coordinator.

David C. Mason

Mr. Mason was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. Mr. Mason came to the Tribunal following a number of years as an industrial relations personnel manager with Rio Algom Ltd.

Nick McCombie

Mr. McCombie was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. His move to the Tribunal followed seven years' service as a legal worker at the Injured Workers' Consultants legal clinic in Toronto.

Kenneth W. Preston

Mr. Preston was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. A graduate chemical engineer, Mr. Preston was Director of Employee Relations for Union Carbide for ten years and Vice-President of Human Resources for Kellogg Salada for three years.

Maurice Robillard

Mr. Robillard was appointed to the Tribunal effective March 11, 1987. Prior to his appointment, he was an international representative of the Amalgamated Clothing and Textile Workers' Union of America for 20 years with a wide range of experience including mediation of internal union problems, negotiating contracts, appearances before various provincial labour relations boards and advising workers of their rights under provincial labour laws.

Jacques Seguin

Mr. Seguin was appointed to the Tribunal as a Member representative of employers effective July 1, 1986. Mr. Seguin was Chairman of the Softwood Plywood Division of the Canadian Hardwood Plywood Association C.L.A. and Vice-President of CHPA from 1981 to 1983, and retired from Levesque Plywood Limited as General Manager in 1984.

PART-TIME MEMBERS OF THE TRIBUNAL

Part-Time Vice-Chairmen

Arjun Aggarwal

Dr. Aggarwal was appointed to the Tribunal effective May 14, 1986. He is currently the coordinator of labour management studies at Confederation College in Thunder Bay, Ontario. He has past experience as a labour lawyer, labour consultant, conciliator, fact-finder, referee, and is an approved arbitrator.

Jean-Guy Bigras

Mr. Bigras was appointed to the Tribunal effective May 14, 1986. Mr. Bigras is a bilingual communications specialist, writing reports and speeches for government agencies and private relations firms. He was formerly the Chief, Creative Services, General Secretariat of the National Capital Commission, and Manager of Information Services of the Export Development Corporation. He spent 10 years with the North Bay Nugget, first as a District Editor and finally as City and News Editor.

Sandra Chapnik

Appointed to the Tribunal effective March 11, 1987, Ms. Chapnik practices with the law firm of Leonard A. Banks and Associates. She has also served as a part-time Rent Review Commissioner and a Fact Finder for the Education Relations Commission.

Gary Farb

Mr. Farb was appointed to the Tribunal effective March 11, 1987. He is in private practice and was called to the Bar in 1978. He has a wide range of experience in administrative law, including two years as legal counsel in the Office of the Ombudsman.

Ruth Hartman

Ms. Hartman was appointed to the Tribunal effective December 11, 1985. She is currently in private practice with an emphasis on administrative appeals to provincial tribunals. She was previously counsel to the Ombudsman for five years.

Joan Lax

Ms. Lax was appointed to the Tribunal effective May 14, 1986. Called to the Bar in 1978, she has practised with the law firm of Weir & Foulds, with emphasis on administrative and civil law. She is currently the Assistant Dean, Faculty of Law, University of Toronto.

John M. Magwood

Appointed to the Tribunal effective December 11, 1985, Mr. Magwood was called to the Bar in 1936 and has been a prominent member of the Ontario Bar for over 40 years. Over the past eight years, he had been the chairman of the Canadian Executive Services Overseas (CESO).

Victor Marafioti

Mr. Marafioti, appointed to the Tribunal effective March 11, 1987, is currently the Director of Business Programs at Centennial College of Applied Arts and Technology. For approximately ten years, he was the Director of COSTI, a rehabilitation centre with extensive involvement with the Workers' Compensation Board.

William Marcotte

Mr. Marcotte was appointed to the Tribunal effective May 14, 1986. He is a mediator and is on the list of approved arbitrators with the Ministry of Labour. He teaches collective bargaining processes and educational organizations at the University of Western Ontario.

Eva Marszewski

Ms. Marszewski was appointed to the Tribunal effective May 14, 1986. She was called to the Bar in 1976 and is, at present, in private practice with special emphasis on civil litigation, family law, municipal law and labour law. She is a past member of the Ontario Advisory Council on Women's Issues.

John Paul Moore

Mr. Moore was appointed to the Tribunal effective July 16, 1986. Called to the Bar in 1978, Mr. Moore is currently a staff lawyer with Downtown Legal Services on a part-time basis, dealing with various administrative tribunals.

Denise Reaume

Appointed to the Tribunal effective March 11, 1987, Professor Reaume is a Professor of Law at the University of Toronto. She teaches administrative law and her past experience includes a research study entitled, "Compensation for Loss of Working Capacity" for the Ontario Law Reform Commission.

Sophia Sperdakos

Ms. Sperdakos was appointed to the Tribunal effective May 14, 1986. She was called to the Ontario Bar in 1982 and is currently with the law firm of Dunbar, Sachs, Appeal. She was a chairperson and caseworker with the Community and Legal Aid Services programme at Osgoode Hall Law School.

Susan Stewart

Ms. Stewart was appointed to the Tribunal effective May 14, 1986. Ms. Stewart articulated with the Ontario Labour Relations Board and was called to the Bar of Ontario in 1980. She has been a lawyer with the Ontario Nurses' Association for approximately four years and has participated in arbitration hearings as an advocate and union nominee.

Gerald Swartz

Mr. Swartz, appointed to the Tribunal effective March 11, 1987, was at one time Director of Research for the Ministry of Labour. He is now the President of Canadian Loric Consultants Ltd. He has experience in human resources management, negotiating collective agreements, arbitrations, and workers' compensation and employment standards assessments.

Paul Torrie

Mr. Torrie was appointed to the Tribunal effective May 14, 1986. He is currently a partner in the law firm of Torrie, Simpson, practising in a wide range of litigation, administrative and corporate law. Mr. Torrie's additional work experience includes community legal work with the Osgoode Hall Community Legal Aid Services programme.

Peter Warrian

Mr. Warrian was appointed to the Tribunal effective May 14, 1986, and has extensive labour relations experience through his involvement with the Ontario Public Service Employees Union. He currently carries on a consulting business with government and union clientele and has written extensively in the labour relations field.

Chris Wydrzynski

Professor Wydrzynski was appointed to the Tribunal effective March 11, 1987. He is a professor of law at the University of Windsor (since 1975) and was called to the Bar in 1982. He teaches administrative law and has acted as a referee, analyst, consultant, research evaluator and panelist.

Members Representative of Employers and Workers: Part-Time

Shelley Acheson

Ms. Acheson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. She was the Human Rights Director of the Ontario Federation of Labour from 1975 to 1984.

Dave Beattie

Mr. Beattie was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He has 20 years of WCB experience representing injured workers or disabled firefighters in Appeals Adjudicator and Appeal Board hearings.

Frank Byrnes

Mr. Byrnes was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. He was formerly a police officer and has been a member of the Joint Consultative Committee on Workers' Compensation Board matters.

Herbert Clappison

Mr. Clappison was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. Mr. Clappison retired from Bell Canada in 1982 after 37 years of employment with that company. Upon retirement, he was Director of Labour Relations and Employment.

George Drennan

Mr. Drennan was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He has been the Grand Lodge Representative for the International Association of Machinists and Aerospace Workers since 1971.

Douglas Felice

Mr. Felice was appointed to the Tribunal as a Member representative of workers effective May 14, 1986, and is currently with the Canadian Paper Workers Union.

Mary Ferrari

Ms. Ferrari was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. Her previous experience includes legal worker with the Industrial Accident Victims Group of Ontario.

Patti Fuhrman

Ms. Fuhrman was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. She was a caseworker at the Advocacy Resource Centre for the Handicapped and, more recently, was a worker with Employment and Immigration Canada.

Donald Grenville

Mr. Grenville was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has an extensive personnel management background with Texas Gulf Sulphur Canada and more recently, Canada Development Corporation.

Roy Higson

Mr. Higson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He recently retired from the Retail, Wholesale and Department Store Union. He was the international representative of Local 414 for nine years and has 29 years of union experience.

Faith Jackson

Ms. Jackson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. A Nurses' Aid at Guildwood Villa Nursing Home from 1972 to 1985, Ms. Jackson was a member of the Executive Board of the Service Employees International Union (SEIU) for six years.

Donna Jewell

A resident of London, Ms. Jewell was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. She has been the assistant safety director of Ellis-Don Ltd. for approximately seven years. She managed the Ellis-Don WCB claims management and safety programs.

Peter Klym

Mr. Klym was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. He is currently employed with the Communication Workers of Canada.

Teresa Kowalishin

Ms. Kowalishin was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. She has been employed as a lawyer with the City of Toronto since her call to the Bar in 1979.

Martin Meslin

Mr. Meslin was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has over 30 years of experience in running his own business in the printing industry. He was a lay member of the Ontario Legal Aid Plan Appeals Committee.

John Ronson

Mr. Ronson was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has an extensive background in personnel development at Stelco.

Members Who Resigned During the Reporting Period

The following part-time Tribunal Members resigned during this reporting period:

James Connor

Tribunal Member representative of employers

William Correll

Tribunal Member representative of employers

Allan MacIsaac

Tribunal Member representative of workers

Marlene Philip

Vice-Chairman

Frank Sampson

Tribunal Member representative of employers

E.A. (Ted) Seaborn

Tribunal Member representative of employers

Ken Signoretti

Tribunal Member representative of workers

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX B

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CHAIRMAN OF THE TRIBUNAL

AND

THE MINISTER OF LABOUR

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE WORKERS' COMPENSATION APPEALS TRIBUNAL ('Tribunal')
AND
THE ONTARIO MINISTRY OF LABOUR ('Ministry')
DATE: October 16, 1987

"G. Sorbara"

Minister of Labour

"S.R. Ellis"

Chairman
Workers' Compensation Appeals Tribunal

CONCURRED:

"Robert G. Elgie"

Chairman
Workers' Compensation Board

CONTENTS

	Page
1. INTRODUCTION AND BACKGROUND	1
2. PURPOSE AND OBJECTIVES OF TRIBUNAL	1
3. ROLE AND RESPONSIBILITIES	2
4. ADMINISTRATION	3
5. SUPPORT SERVICES	5
6. FINANCIAL	6
7. OPERATING STATUS	8
8. REPORTING	8
9. AUDIT	9
10. SUNSET REVIEW	9

1. INTRODUCTION AND BACKGROUND

- (a) This Memorandum of Understanding constitutes a formal description and agreement on the administrative, operating and accountability relationships between the Chairman of the Workers' Compensation Appeals Tribunal ('Chairman'), the Workers' Compensation Appeals Tribunal ('Tribunal'), and the Minister of Labour ('Minister'). This agreement does not supersede the provisions of the constituting legislation, nor is it intended to interfere with the independent judicial operation of the Tribunal.
- (b) The Tribunal was created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 — Section 32, which came into force on October 1, 1985.
- (c) The Chairman shall exercise his responsibilities and activities in accordance with his Memorandum of Understanding, subject to the Workers' Compensation Act ('Act') and the powers conferred upon the Chairman by that Act.
- (d) The Memorandum of Understanding is effective on the date it is executed by the Minister of Labour and the Chairman, subject to the approval of Management Board of Cabinet.
- (e) The Memorandum of Understanding shall be reviewed at the request of either the Minister of Labour or the Chairman, or upon the appointment of a new Chairman or a new Minister. Any future amendments to this Memorandum of Understanding are subject to the approval of Management Board of Cabinet.

2. PURPOSE AND OBJECTIVES OF THE WORKERS' COMPENSATION APPEALS TRIBUNAL

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by the workers and employers from decisions, orders or rulings of the Workers' Compensation Board, and any matters or issues expressly conferred upon the Tribunal by the Act.

It is the objective of the Tribunal to hear appeals or applications as expeditiously and efficiently as possible in order to ensure an appellant or applicant is given a hearing without undue delay, while giving due consideration in each case to the need to identify the issues, investigate the facts, ensure the availability of necessary relevant medical and other evidence, and consider the applicable policy and law.

The Tribunal will, while attempting to keep cases on hand to a minimum, and investigating the facts of each case, carry out its operations within the budget approved by the Minister of Labour.

3. ROLE AND RESPONSIBILITIES

Minister of Labour

- (a) The Minister is responsible for reporting to the Legislative Assembly and its committees on the activities, performance and expenditures of the Tribunal, and is further responsible for the preparation of any legislative amendments which may be required in the future.
- (b) The Minister of Labour will:
 - approve the annual budget of the Tribunal; and
 - review the Tribunal's Annual Report.
- (c) The Minister shall communicate to the Tribunal those policy decisions of the Government of Ontario relevant to the Tribunal's operations as required.
- (d) The Minister, as the member of the Executive Council responsible for the Act, is responsible for the tabling on behalf of the Tribunal of any submissions, reports, and requests which it may make to the Legislative Assembly and its committees, to Cabinet, to Management Board of Cabinet, and other relevant government agencies.
- (e) The Minister shall arrange for, and provide, the administrative support services and technical advice from the Ministry of Labour or other agencies of the Ontario Government specified herein in a manner that does not interfere with the Tribunal's ability to make independent judicial decisions.

The Workers' Compensation Appeals Tribunal

- (f) The Tribunal is responsible for exercising the powers and performing the duties as described in Section 86(a) through 86(o) inclusive of the Workers' Compensation Act in an efficient, effective, fair and objective manner.
- (g) The Tribunal, in exercising such powers, shall adjudicate on individual cases independent of the Government, the Minister, and the Workers' Compensation Board, or any other individual group or organization, subject only to the provisions, limitations, and conditions found in the Act.

Chairman, Workers' Compensation Appeals Tribunal

- (h) The Chairman of the Tribunal is its Chief Executive Officer.
- (i) The Chairman is responsible for ensuring that the legislated mandate of the Tribunal is fulfilled in an efficient and effective manner.

- (j) The Chairman is responsible for the efficient, effective, fair and objective operation of the Tribunal, and as Chief Executive Officer, is accountable to the members of the Workers' Compensation Appeals Tribunal for such operations, and as Chairman is accountable to the Legislature of Ontario through the Minister.
- (k) The Chairman has the obligation to provide the Minister with such information concerning the Tribunal's operations as the Minister may require for reports to the Legislative Assembly and its committees.
- (l) The Chairman has the right to operate the Tribunal in accordance with the specific exemptions contained in Section 4 of this Memorandum, and for those items not specifically set out, shall operate in accordance with the administrative policies of the Government of Ontario.
- (m) The Chairman of the Tribunal will prepare an annual budget and will forward this budget to the Minister for his consideration by December 31st of the calendar year preceding the fiscal year in question.
- (n) The position of the Chairman must be classified under the Executive Compensation Plan.

Workers' Compensation Board ('The Board')

- (o) The Board is responsible for flowing funds necessary for the day-to-day operations of the Tribunal and for incorporating such expenditures of the Tribunal as part of the Board's administrative expenses. The Board will exercise no other administrative duties other than this item.

4. ADMINISTRATION

The Tribunal has been designated a Schedule 1 Agency in accordance with Section 25-2 of the Ontario Manual of Administration, with the following specific exceptions to the guidelines governing Schedule 1 Agencies.

- (a) The Chairman, according to sub-section 86b(3) of the Act may, at his discretion, establish job classifications, personnel qualifications and ranges for remuneration and benefits and may appoint, promote and employ officers and employees of the Tribunal in accordance with the Tribunal's framework of personnel, salary and benefits, subject to guidelines as established by Management Board of Cabinet. The Chairman further agrees to take as his guidelines for the classification and remuneration for officers and staff of the Tribunal the classification and remuneration within the Civil Service, and as his guidelines for the recruiting of such officers and staff, the principles and practices of the Ontario Public Service with regard to open competitions and selection based on merit and guidelines established by Management Board of Cabinet for the public service as a whole. The Chairman will appoint officers and staff as Crown Employees of the Tribunal, and not as employee under the Public Service Act. Subject to an obligation to bargain collectively with Tribunal employees, full-time employees may receive employee benefits as provided in Part VI of Regulation 881 under the Public Service Act in the same manner as if such employees were appointed to the Service of the Crown under the Public Service Act and the Tribunal shall pay the employee's portion of such benefits through the appropriate Government of Ontario Plan in force.
- (b) Lawyers employed by the Tribunal shall be employees of the Tribunal and not members of the Common Legal Service of the Ministry of the Attorney General.
- (c) The Tribunal may, out of funds provided by the Workers' Compensation Board, acquire all forms of goods and services including office equipment, outside legal and other professional services, accommodation and information processing systems necessary for efficient and effective operations.
- (d) In acquiring such goods and services, the Tribunal will follow the policies and practices used by the Ontario Government in acquiring goods and services as established by Management Board of Cabinet.
- (e) Any assets, either real or intellectual property, acquired by the Tribunal, shall be considered assets of the Tribunal and shall be insured against appropriate perils by the Tribunal. It is understood that in the event of a disabandonment of the Tribunal, the title to the Tribunal's assets shall pass to the Workers' Compensation Board.
- (f) The Tribunal will, while maintaining its own bank accounts for payments, use the Government's Integrated Payroll, Personnel and Employee Benefits System (IPPEBS), and receive support from the Ministry of Government Services' Employee Benefits and Data Services Branch, to record personnel information and provide a basis of benefits administration and the generation of payroll cheques and cheques to insurance carriers and to the Federal Government with regard to universal social benefits. The Tribunal will use standard government documentation for input to this system.
- (g) The Tribunal will not use the Government's Central Attendance Reporting System (CARS) but will maintain its own record of vacation attendance and other credits for its staff.
- (h) The Tribunal is required to adhere to the Government of Ontario's Visual Identity Program in consultation with the Secretariat of the Management Board of Cabinet and as prescribed in the Ontario Visual Identity Manual.

5. SUPPORT SERVICES

- (a) Unless otherwise mutually agreed between the Ministry of Labour and the Tribunal, the Ministry of Labour will provide administrative advice and support services to the Tribunal upon request with respect to the following:
 - assistance in acquisition of accommodation and future relocation;
 - office automation, telecommunications, computer systems and related technologies;
 - purchasing;
 - personnel services: classification services, staff relations and recruitment advice;
 - liaison with central agencies (e.g. preparation of Management Board submissions);
 - internal audit services;
 - mail handling within the Ontario Public Service.
- (b) Unless otherwise agreed to with the Ministry of Labour in writing, the Tribunal shall assume responsibility for, and make its own arrangements, in keeping with the provisions of Section 3(1) with respect to the following:
 - recruitment;
 - payroll, including IPPEBS input;
 - telephone installation and maintenance;
 - acquisition of professional services;
 - courier services;
 - public relations;
 - accounting and budget control systems and procedures;
 - mail handling external to the OPS;
 - forms design;
 - acquisition of furniture;
 - printing;
 - communications services;
 - library, research, archival functions;
 - facility and records security;
 - legal counsel;
 - inventory control;
 - reproduction equipment/operations.

6. FINANCIAL

- (a) The Tribunal is funded directly as an administrative expense of the Workers' Compensation Board independent of the Consolidated Revenue Fund.
- (b) For purposes of this agreement, the Chief Executive Officer of the Tribunal is also to be regarded as the Chief Financial Officer of the Tribunal; and as such, is responsible for the maintenance of the Tribunal's accounts in accordance with government accounting policy, subject to the Workers' Compensation Act.
- (c) The Tribunal's financial year shall be from April 1st to March 31 of the following year.
- (d) The Chairman of the Tribunal shall forward annually to the Minister a proposed budget for the next fiscal year which will outline:
 - the expected activity level for the various types and groups of appeals and the Tribunal's plans for handling its expected workload;
 - a calendarized expenditure estimate for the period which will indicate the following items: salaries and wages, employee benefits, transportation/communications services and supplies and equipment.
- (e) The budget shall be prepared by the Tribunal in accordance with the Government's annual budget format and in conformity with generally accepted budgeting and accounting standards and practices of the Government of Ontario.
- (f) The budget shall be submitted to the Minister prior to the end of the calendar year preceding the next fiscal year; that is, three months prior to the start of the next fiscal year.
- (g) The Minister will give his written approval to a final budget prior to the start of the Tribunal's fiscal year.
- (h) The Minister will inform the Workers' Compensation Board, in writing, of the Tribunal's approved annual budget and any subsequent changes as soon as possible after their approval.
- (i) The Tribunal's expenditures shall form part of the administrative costs of the Workers' Compensation Board and shall form part of its annual financial statement.
- (j) The Tribunal shall make its expenditures in accordance with the approved budget; increases in expenditures beyond the approved levels shall not be made without prior notification to, and approval of, the Minister.
- (k) Increases in staff levels beyond the approved budget shall not be made without prior approval of the Minister.

- (l) The Tribunal shall establish bank accounts necessary for its operations and shall keep a separate interest-bearing account for cash received from the Workers' Compensation Board, and separate accounts for payroll and benefits expenditures and, such other significant expenditure areas as, appellant and witness expenses, medical consulting fees, and a general expenditure account.
- (m) The Tribunal shall not accumulate large amounts of cash on hand and will transfer money from its cash account to its expenditure accounts as required on a day-to-day basis.
- (n) The Tribunal shall work closely with the Workers' Compensation Board to ensure that it has enough cash on hand at any time to meet its predicted expenditures, while not accumulating a significant cash surplus. To this end, the Workers' Compensation Board, with due consideration to the calendarized budget, shall transfer funds to the Tribunal on a monthly basis. The Tribunal will provide the Board with a detailed monthly statement of its expenditures and any significant upcoming expenditures which were not contemplated or represent a major deviation from the expected calendarized budget. The Board shall advance such monies on deposit to cover a month and a half of expenditures and that reimbursement of expenditures will be based on submission of the previous month's financial statements.

7. OTHER FINANCIAL OR OPERATING RELATIONSHIPS

- (a) The Minister of Labour is responsible, with other Ministers as appropriate, for intergovernmental relations as they are required or may affect the Tribunal.
- (b) The Tribunal shall not enter into any agreement with respect to borrowing, loss funding or other similar financial transactions. In this respect, the Chairman is responsible for compliance with the Manual of the Office of the Treasury.
- (c) The cost of providing support services by the Ministry of Labour to the Tribunal under this Memorandum may be recovered for deposit in the Consolidated Revenue Fund from the Workers' Compensation Board. The Ministry will provide the Board with a calendarized annual estimate of the cost of these services.

8. REPORTING

- (a) The Tribunal shall produce reports of a statistical, operational and financial nature during the fiscal year including:
 - monthly reports of actual versus planned expenditures and projections for the balance of the year;
 - monthly reports with regard to staffing levels and projected staffing levels;
 - monthly reports on the status of the Tribunal's caseload.
- (b) The Tribunal shall provide copies of the above reports to the Minister as required.
- (c) The Tribunal shall also provide the Minister with an Annual Report for purposes of public accountability. It shall reflect the operational plans and actual activities of the Tribunal for the past year, its financial expenditures for the period and its financial position at the end of the year.
- (d) The audited annual financial statements of the Tribunal, for purposes of public accountability, shall be prepared in accordance with generally accepted accounting principles and standards, and shall be audited by the Provincial Auditor or a reputable accounting firm at the end of each fiscal year.
- (e) The Tribunal shall comply with the requirements of the WCB to provide audited financial statements at the end of each calendar year of the Tribunal's operation.

9. AUDIT

- (a) The Tribunal, as a Schedule I Agency of the Government, is subject to routine financial and operational audit according to procedures and policies of Government and the Ministry of Labour.
- (b) The Tribunal shall provide such information as may be required by the Provincial Auditor or the Ministry's Internal Auditors in the conduct of financial, management or EDP audits.

10. SUNSET REVIEW

The parties understand that the Minister is required to undertake a sunset review of the Tribunal in accordance with guidelines established by Management Board, and submit a report to Management Board by *October 1, 1988*.

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX C

WEEKLY WORKLOAD ANALYSIS

WEEKLY WORKLOAD ANALYSIS

AS AT W.E. October 2nd, 1987

1	AWAITING INITIAL PROCESSING		27	
2	INTAKE PROCESSING - CASE IN PROGRESS :			
	SECTION 15		12	
	SECTION 21 *		0	
	SECTION 77 (note 7)		49	
	SECTION 86o	- WRITTEN	2	
		- ORAL	25	27
	TOTAL CASES IN INTAKE			115
3	TCO PROCESSING :			
	CASES WAITING TO BE SORTED BY TCO: NOT SORTED		11	
	CASES WAITING TO BE ASSIGNED TO INDIVIDUAL TCO: SORTED		33	
	CASES WAITING TO BE ASSIGNED TO TRACK 3 : SORTED		27	
	ASSIGNED CASES:		71	
	- CD PREPARATION IN PROGRESS (Note 5)	218		
	- UNABLE TO PROCEED -SCHEDULING STATUS "C"	59		
	- NOT HEARING READY	65		
	- CD REQUIRED CASES ? (NOTE 1)	17		
	TOTAL ASSIGNED		359	
	TOTAL CASES IN TCO - PRE-HEARING			430
4	HEARING READY CASES :			
	TRANSMITTAL FORMS NOT SENT TO SCHEDULING (NOTE 2)			23
5	SCHEDULING :			
	ON HOLD IN SCHEDULING			
	-2 WEEK WAITING PERIOD (H)		38	
	CURRENT; IN PROGRESS (B)		195	
	SCHEDULED CASES (D) :-			
	OCTOBER/87 (4 weeks)	84		
	S.77 (2 half days)	14		
	NOVEMBER/87	60		
	DECEMBER/87	33		
	JANUARY/87	10		
	TOTAL SCHEDULED (NOTE 3)		201	
	TOTAL IN SCHEDULING			434
6 **	TOTAL ACTIVE PRE-HEARING WORKLOAD **			1,002
7	CASES ON HOLD			
	UNSCHEDULABLE CASES IN SCHEDULING (E)	117		
	PENSION CASES (IN SCHEDULING)	18		
	PENSION CASES (SORTED BY TCO AND NOT ASSIGNED)	99		
	PENSION CASES	274		
	DORMANT	56		564
8 **	TOTAL PRE-HEARING WORKLOAD **			1,566
9	TOTAL POST-HEARING WORKLOAD : (NOTE 4)			
	CASES PENDING DECISIONS FROM VICE-CHAIRS			
	: FINAL	522		
	: INTERIM	3		
	SUB-TOTAL	525		
	CASES HEARD IN WHICH HEARING IS :			
	COMPLETE ON HOLD	157		
	RECESSED	68		
	NO KNOWN STATUS	8		
	SUB-TOTAL	233		
**	TOTAL POST-HEARING WORKLOAD **			758
10	POST DECISION CASES :			
	OMBUDSMAN'S REQUEST	39		
	RECONSIDERATION (Note 6)	19		
	JUDICIAL REVIEW	7		
**	TOTAL POST DECISION CASES **			65
	TOTAL CASES IN TRIBUNAL			2,389

*See following page for explanatory notes

WEEKLY WORKLOAD ANALYSIS

as at W.E. October 2, 1987

Explanatory Notes

1. Tribunal Counsel Office (TCO) did not indicate if these cases require Case Description or not and they were not noted as ready for hearing.
2. There are 23 cases indicated as hearing ready by TCO in which SCHEDULING has not received any transmittal forms. They are related to cases in which Case Descriptions had been completed in the last two weeks.
3. The total scheduled cases of 201 does not include the following:

RECONVENED CASES

October	12
November	6
December	4
January	1

TOTAL 23

*THESE CASES HAVE ALREADY BEEN INCLUDED IN THE POST-HEARING WORKLOAD UNDER "RECESSED" AND "COMPLETE/HOLD" HEARINGS.

4. Please note that this category has been expanded to include cases which a hearing has begun but has not been completed, in order to give a better indication of the post-hearing workload.
5. One hundred and three of the total two hundred and eighteen Case Descriptions in progress are PENSION cases.
6. Five of the nineteen active Reconsideration applications have been assigned to Vice-Chairs and may result in a Reconsideration decision.
7. The breakdown for the 49 cases as indicated by Intake have not been received for the week.

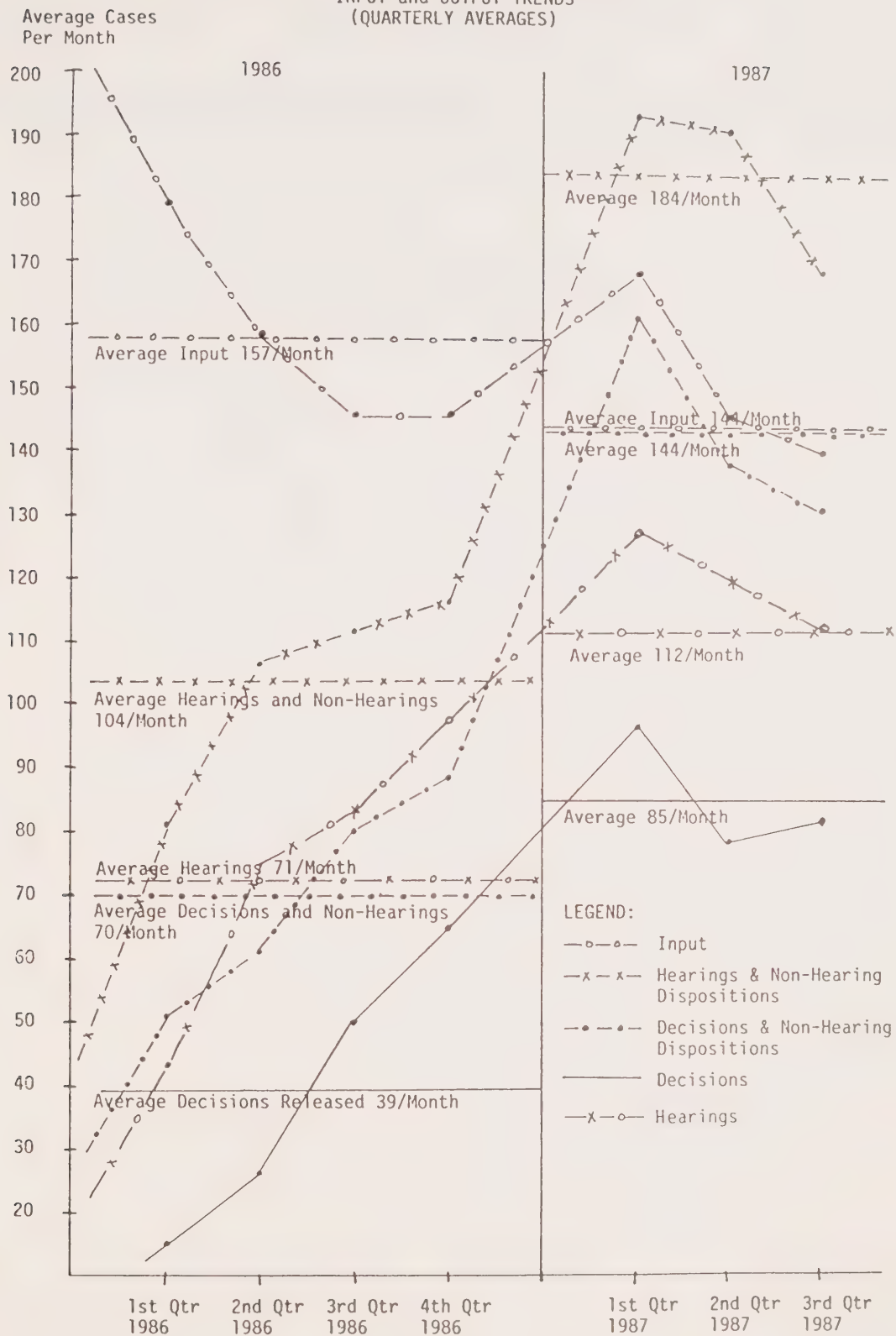
WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX D

GRAPH OF INPUT AND OUTPUT TRENDS

WORKERS' COMPENSATION APPEALS TRIBUNAL
INPUT and OUTPUT TRENDS
(QUARTERLY AVERAGES)



WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX E

INCOMING CASELOAD STATISTICS

1. Monthly Breakdown of Incoming Cases
2. Breakdown of Cases in 6-Month Bites
3. Case Input by Type of Appeal
4. Case Input by Type of Appeal (during 24-month period)

Workers' Compensation Appeals Tribunal
Second Report

MONTHLY BREAKDOWN OF INCOMING CASES

For the reporting period

October 1, 1986 to September 30th, 1987

DESCRIPTION	Previous Year Total	Oct-86	Nov-86	Dec-86	Jan-87	Feb-87	Mar-87	Apr-87	May-87	Jun-87	Jul-87	Aug-87	Sep-87	Year To Date	24 month Total
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
INPUT BY TYPE :	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
S.860	287 *	19	12	12	7	17	7	7	9	4	5	4	10 *	113	400
S.15	122 *	8	9	5	10	10	10	6	10	8	7	13	1 *	97	219
S.21	44 *	7	5	4	6	4	6	8	7	9	5	13	5 *	79	123
S.77	121 *	26	22	26	27	19	28	24	28	22	33	37	25 *	317	438
Pension	352 *	25	14	16	13	25	16	15	19	15	10	19	5 *	192	544
Comutation	3 *	0	0	0	0	2	0	1	3	5	1	0	3 *	15	18
Employer Assessment	24 *	4	6	5	4	2	1	3	0	1	1	1	1 *	29	53
Judicial Review	2 *	0	0	1	0	0	0	0	0	3	1	1	1 *	7	9
Ombudsman's Request	5 *	1	2	3	1	3	2	7	1	8	9	4	7 *	48	53
Reconsideration	7 *	4	4	7	1	3	3	6	6	4	3	5	2 *	48	55
No Jurisdiction	157 *	3	5	6	3	6	6	2	5	4	4	2	6 *	52	209
Entitlement & Other	1,485 *	117	46	65	89	89	86	64	62	63	30	79	67 *	857	2,342
Total	2,609 *	214	125	150	161	180	165	143	150	146	109	178	133 *	1,854	4,463
	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

S.860 - Leave to appeal applications.
 S.15 - Applications for ruling as to whether Act prohibits civil litigation.
 S.21 - Worker's objection to attending at employer organized medical examination.
 S.77 - Appeals on WCB decisions concerning access to worker's files.
 Pension - Permanent partial disability pension appeals.
 Comutation - Appeals from WCB decisions on worker's application for payment of lump sum in lieu of period payments.
 Employer Assessment - Appeals by employer of WCB assessment decisions.
 Judicial Review - Application to the divisional court for review of a Tribunal decision.
 Ombudsman's Request - Inquiry from the Ombudsman following complaints regarding Tribunal decisions.
 Reconsideration - Application for the Tribunal to reconsider a decision of the Tribunal.
 No Jurisdiction - Cases found at a preliminary stage not to be within the jurisdiction of the Tribunal.
 Entitlement and Others - Regular appeals from WCB decisions on entitlement and quantum plus a few miscellaneous matters.

* Based on the date of receipt of WCB files

Workers' Compensation Appeals Tribunal
Second Report

**BREAKDOWN ON INCOMING CASES
IN 6-MONTH BITES**

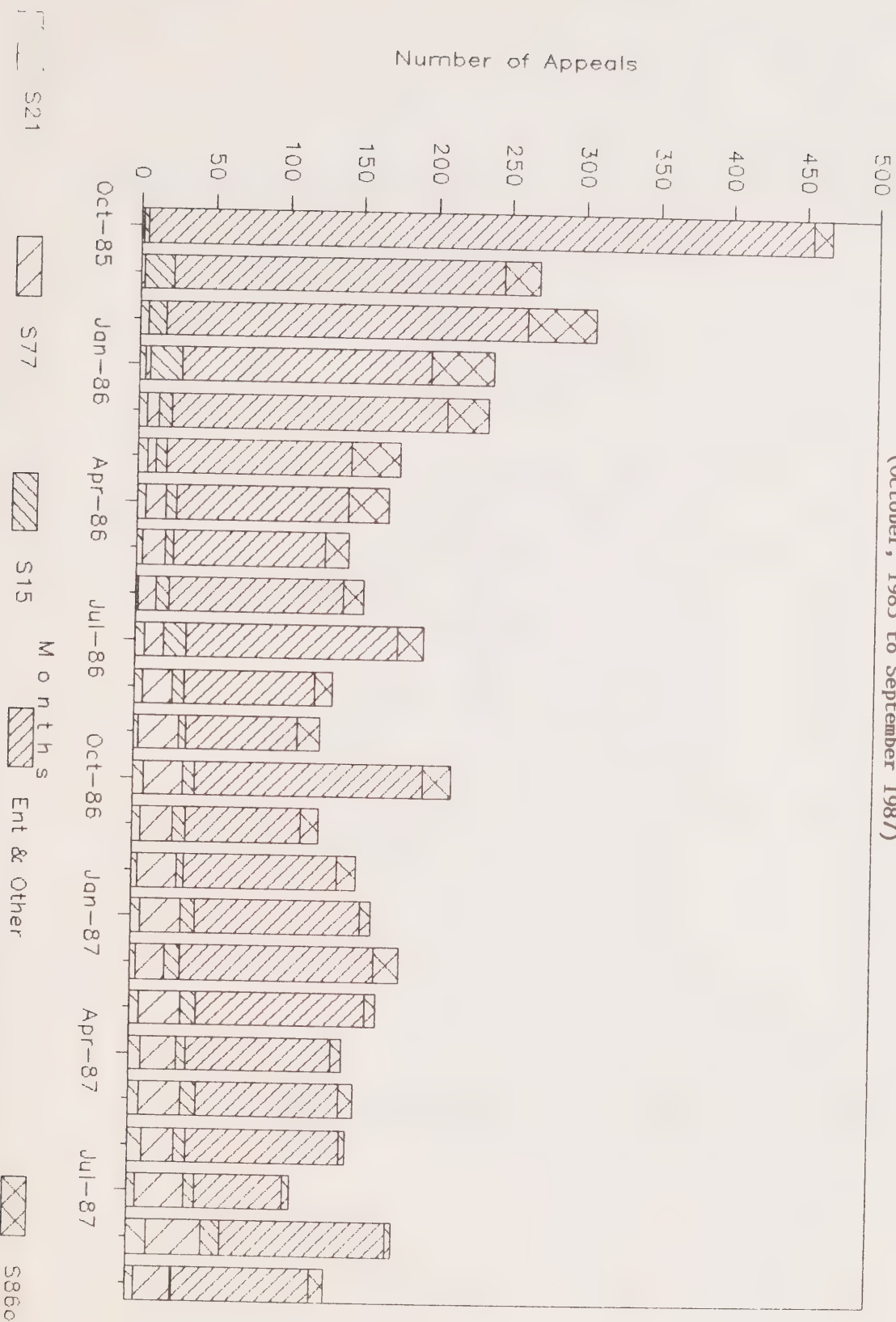
For the 24 month period October 1, 1985 to September 30th, 1987

DESCRIPTION	24 month Total		October 1985 to March 1986 (6 months)	April 1986 to September 1986 (6 months)	October 1986 to March 1987 (6 months)	April 1987 to September 1987 (6 months)
		%				
INPUT BY TYPE : (see note)						
S.86o	400	9.0%	185	102	74	39
S.15	219	4.9%	72	50	52	45
S.21	123	2.8%	20	24	32	47
S.77	438	9.8%	20	101	148	169
Pension	544	12.2%	252	100	109	83
Commutation	18	0.4%	2	1	2	13
Employer Assessment	53	1.2%	17	7	22	7
Judicial Review	9	0.2%	1	1	1	6
Ombudsman's Request	53	1.2%	0	5	12	36
Reconsideration	55	1.2%	0	7	22	26
No Jurisdiction	209	4.7%	115	42	29	23
Entitlement & Other	2,342	52.5%	1,008	477	492	365
Total	4,463	100%	1,692	917	995	859

Note: Please refer to Monthly Breakdown of Incoming Cases
chart for detail description.

Workers' Compensation Appeals Tribunal
Second Report

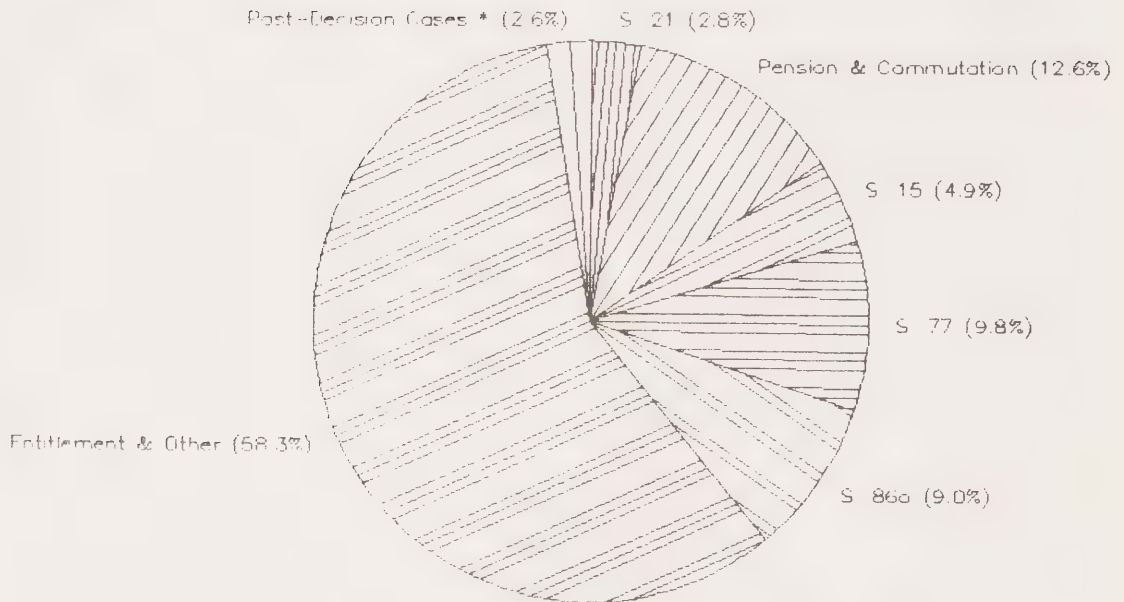
Case Input by Type of Appeal (October, 1985 to September 1987)



**Workers' Compensation Appeals Tribunal
Second Report**

Case Input by Type of Appeal

During 24 month period



* Post-Decision cases include reconsideration applications, Ombudsman's inquiries and judicial review cases.

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX F

PRODUCTION STATISTICS

1. Monthly Production Statistics
2. Monthly Current Caseload Statistics
3. Summary of Current Caseload Statistics
4. Case Disposition Analysis
5. Breakdown of Non-Hearing Dispositions

Workers' Compensation Appeals Tribunal
Second Report

MONTHLY PRODUCTION STATISTICS

For The Reporting Period

October 1, 1986 to September 30, 1987

	Previous Year Total	MONTHLY INCREMENTS												Year To Date Total	24 Month Total	%
		Oct-86	Nov-86	Dec-86	Jan-87	Feb-87	Mar-87	Apr-87	May-87	Jun-87	Jul-87	Aug-87	Sep-87			
INPUT																
Number of cases	2,609	214	125	150	161	180	165	143	150	146	109	178	133	1,854	4,463	
OUTPUT																
Cases withdrawn	147	26	16	3	32	50	34	25	27	20	24	8	21	286	433	21%
Cases with no jurisdiction	162	3	10	2	10	13	6	4	7	7	5	3	8	78	240	12%
Other	4	1	0	1	0	3	1	0	1	1	0	2	1	11	15	1%
Cases disposed due to dormancy	0	0	0	0	0	1	2	17	16	16	9	5	14	80	80	4%
Cases settled	5	2	4	0	1	3	0	1	1	6	4	5	24	51	56	3%
Disposition of Post-Decision cases **	0	2	2	1	2	6	6	3	2	15	2	0	4	45	45	2%
Disposition through Case Direction Panel	1	0	0	0	0	0	1	0	0	0	1	0	0	2	3	0%
TOTAL NON-HEARING DISPOSAL (A)	319	34	32	7	45	76	50	50	54	65	45	23	72	553	872	
Cases with final decisions issued (B) †	250	37	62	83	62	84	135	75	91	99	76	61	87	952	1,202	58%
TOTAL CASES FINALLY DISPOSED OF (A+B)	569	71	94	90	107	160	185	125	145	164	121	84	159	1,505	2,074	100%

NOTES:

- † Columns show monthly additions only
- ** These are dispositions of Reconsideration Application, Ombudsman's Request and Judicial Review.
- † These figures excludes interim decisions and decisions on reconsideration applications.

Workers' Compensation Appeals Tribunal
Second Report

MONTHLY CURRENT CASELOAD STATISTICS

As at end of Reporting Period

September 30, 1987

CURRENT CASELOAD	As at End of Previous Year 30-Sep-86	----- AS AT END OF -----											
		31-Oct-86	30-Nov-86	31-Dec-86	31-Jan-87	28-Feb-87	31-Mar-87	29-Apr-87	31-May-87	30-Jun-87	31-Jul-87	31-Aug-87	30-Sep-87
CASES AT PRE-HEARING STAGE:	1,501	1,599	1,600	1,670	1,706	1,684	1,668	1,645	1,662	1,648	1,606	1,672	1,631
POST-HEARING CASES :													
RECESSED	75	72	67	60	52	53	58	65	73	59	65	69	68
COMPLETED BUT ON HOLD	125	51	60	76	92	128	111	135	150	190	145	168	165
READY-TO-WRITE DECISION	450	364	400	346	384	407	422	468	465	457	492	498	525
TOTAL CASES AT POST-HEARING STAGE	650	487	527	482	528	588	591	668	688	706	702	735	758
TOTAL CASELOAD	2,151	2,086	2,127	2,152	2,234	2,272	2,259	2,313	2,350	2,354	2,308	2,407	2,389

Workers' Compensation Appeals Tribunal
Second Report

**SUMMARY OF
CURRENT CASELOAD STATISTICS**

As at end of Reporting Period

September 30, 1987

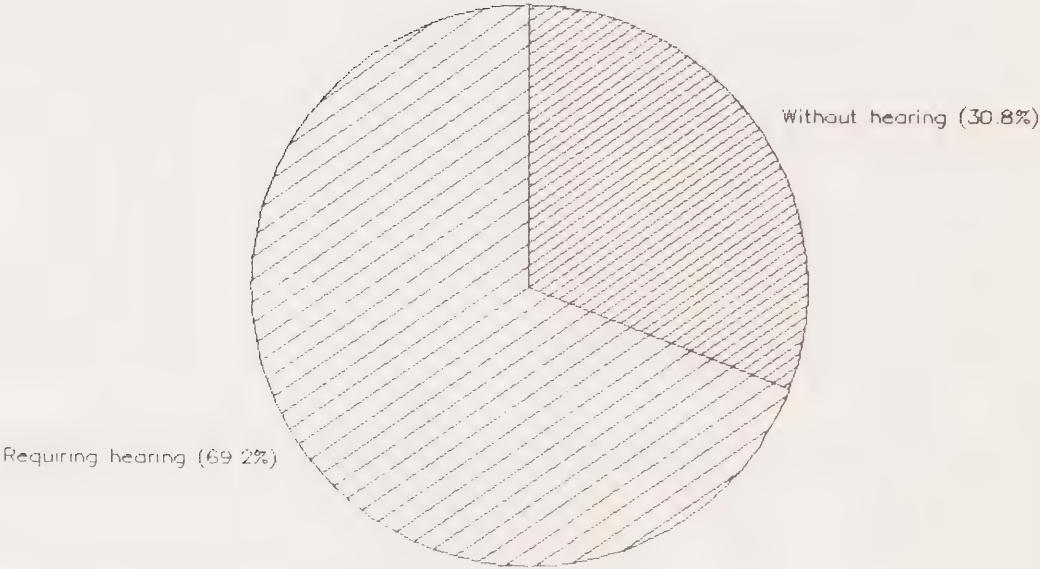
Incoming cases over 24 months	4,463
Output of cases over 24 months	2,075
Current caseload	
at pre-hearing stage	1,631
at post-hearing stage	758

Total current caseload	2,389
	=====

Workers' Compensation Appeals Tribunal
Second Report

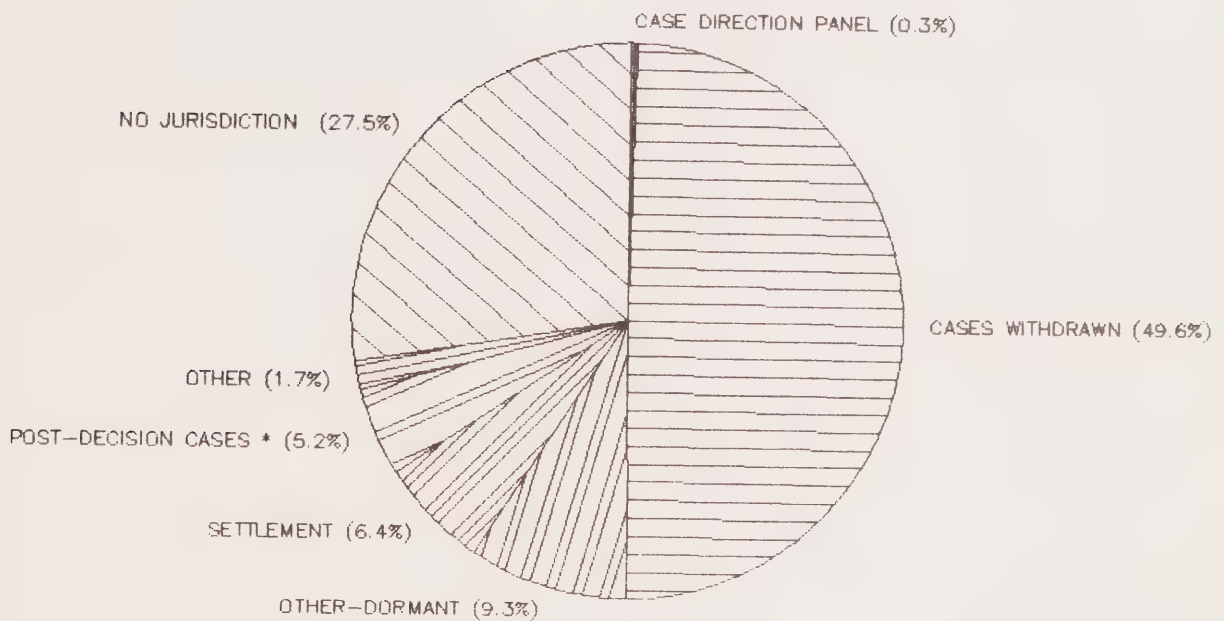
Case Disposition Analysis

During 24 month period



Workers' Compensation Appeals Tribunal
Second Report

Breakdown of Non-Hearing Dispositions
During 24 month period



* Post-Decision cases include reconsideration applications, Ombudsman's inquiries and judicial review cases.

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX G

WORKER AND EMPLOYER REPRESENTATION PROFILES

WORKERS' COMPENSATION APPEALS TRIBUNAL

Employer Representation Profile

Employer :	No. of Cases	% of Total
Claims Officer	33	1%
Consultant	11	0%
Office of the Employer Advisor	49	2%
Lawyer	472	19%
Manager	54	2%
Personnel Department	188	8%
Representative*	616	25%
Safety Officer	184	7%
WCB	9	0%
Other	29	1%
None	861	35%
Sub-total	2,462	100%
Unknown (note)	1,995	
TOTAL	4,457	

NOTE: These are cases in which the representation of the employer is unknown due to a lack of internal administrative documentation prior to the installation of present procedures. The Tribunal believes the breakdown within this grouping would accord roughly with the grouping shown for the cases for which the data was kept.

*These are representatives who did not appear to fall within any of the other categories.

WORKERS' COMPENSATION APPEALS TRIBUNAL

Worker Representation Profile

Worker :	No. of Cases	% of Total
Consultant	43	1%
Lawyer**	739	21%
MP / MPP or their staff	159	5%
Representative*	900	26%
Union	563	16%
WCB	37	1%
Office of the Worker Advisor	647	19%
Other	6	0%
None	357	10%
Sub-total	3,451	100%
Unknown (note)	1,006	
TOTAL	4,457	

NOTE: These are cases in which the representation of the worker is unknown due to a lack of internal administrative documentation prior to the installation of present procedures. The Tribunal believes the breakdown within this grouping would accord roughly with the grouping shown for the cases for which the data was kept.

**Includes clinic staff lawyers.

*These are representatives who did not appear to fall within any of the other categories.

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX H

FINANCIAL STATEMENTS

FOR FISCAL PERIOD (APRIL 1, 1986 to MARCH 30, 1987)

1. Summary Statement of Expenditure
2. Statement of Expenditures

WORKERS' COMPENSATION APPEALS TRIBUNAL
SUMMARY STATEMENT OF EXPENDITURES
AS AT MARCH 31ST, 1987
(IN ' 000)

	ANNUAL BUDGET	MONTHLY BUDGET	MONTHLY ACTUAL	MONTHLY VARIANCE	VARIANCE %	Y-T-D BUDGET	Y-T-D ACTUAL	Y-T-D VARIANCE	VARIANCE %
SALARIES & WAGES	3,220.3	456.5	538.3	-81.8	-17.9%	3,220.3	3,384.8	-164.5	-5.1%
EMPLOYEE BENEFITS	461.3	38.4	44.6	-6.2	-16.0%	461.3	297.8	163.5	35.4%
TRANSPORTATION & COMMUNICATION	625.0	52.1	82.8	-30.7	-59.0%	625.0	354.6	270.4	43.3%
SERVICES	3,233.6	269.5	327.8	-58.3	-21.6%	3,233.6	1,472.3	1761.3	54.5%
SUPPLIES & EQUIPMENT	153.6	12.8	38.9	-26.1	-203.9%	153.6	198.5	-44.9	-29.2%
TOTAL OPERATING EXPENDITURE	7,693.8	829.3	1,032.4	-203.1	-24.5%	7,693.8	5,708.0	1985.8	25.8%
CAPITAL EXPENDITURES	2,165.0		27.1				559.7		
TOTAL EXPENDITURES	9,858.8		1,059.5				6,267.7		

DATED: 30-Jul-87

WORKERS' COMPENSATION APPEALS TRIBUNAL

STATEMENT OF EXPENDITURES

AS AT MARCH 31ST, 1987

(IN '000)

ANNUAL YEAR-TO BUDGET DATE Apr-86 May-86 Jun-86 Jul-86 Aug-86 Sep-86 Oct-86 Nov-86 Dec-86 Jan-87 Feb-87 Mar-87

SALARIES & WAGES

1310 SALARIES & WAGES - REGULAR	3,080.3	2,748.3	34.1	288.5	200.0	207.1	202.9	216.9	333.0	215.4	214.0	205.5	216.8	414.1
1320 SALARIES & WAGES - OVERTIME	100.0	41.9	0.1	3.4	0.3	0.4	0.3	2.9	7.1	4.6	3.7	3.8	4.4	10.9
1325 SALARIES & WAGES - CONTRACT	0.0	321.1	10.6	39.5	22.3	13.6	9.5	11.4	21.7	27.2	28.2	24.8	36.7	75.6
1510 TEMPORARY HELP - GO TEMP.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1520 TEMP. HELP-OUTSIDE AGENCIES	40.0	273.5	0.0	16.1	33.6	19.1	14.7	33.9	18.1	16.2	40.0	17.5	26.6	37.7
TOTAL SALARY AND WAGES	3,220.3	3,384.8	44.8	347.5	256.2	240.2	227.4	265.1	379.9	263.4	285.9	251.6	284.5	538.3

EMPLOYEE BENEFITS

2110 CANADA PENSION PLAN	0.0	41.6	3.8	3.0	5.2	2.9	2.4	2.1	2.0	2.9	2.1	1.9	4.1	9.2
2130 UNEMPLOYMENT INSURANCE	0.0	78.7	5.9	4.2	7.7	5.1	5.0	5.0	5.2	8.1	6.2	7.9	5.7	12.7
2220 PUB. SER. SUPERANNUATION FUND	0.0	51.5	0.0	0.0	0.0	0.0	0.0	0.0	17.5	0.0	0.0	20.1	9.2	4.7
2230 P.S.S.F. ADJUSTMENT FUND	0.0	11.7	0.0	0.0	0.0	0.0	0.0	0.0	4.0	0.0	0.0	4.5	2.1	1.1
2310 ONTARIO HEALTH INSURANCE PLAN	0.0	36.7	2.4	2.7	3.2	2.9	2.9	3.0	3.0	3.2	3.0	3.2	3.3	3.9
2320 SUPPL. HEALTH & HOSPITAL PLAN	0.0	16.6	0.0	0.0	1.2	2.4	1.2	1.3	1.4	1.5	0.0	3.0	1.6	3.0
2330 LONG-TERM INCOME PROTECTION	0.0	13.4	0.0	0.0	0.9	1.9	1.0	1.1	1.1	1.2	0.0	2.5	1.2	2.5
2340 GROUP LIFE INSURANCE	0.0	6.9	0.0	0.0	0.5	1.0	0.5	0.5	0.6	0.7	0.0	1.3	0.6	1.2
2350 DENTAL PLAN	0.0	13.9	0.0	0.0	1.0	2.0	1.0	0.0	2.3	1.2	0.0	2.6	1.3	2.5
2410 WORKER'S COMPENSATION	0.0	0.1	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2520 MATERNITY SUPP. BENEFIT ALL	0.0	17.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.9	4.5	4.5	4.3	2.2
2990 BENEFITS TRANSFER (16.58%)	0.0	9.3	0.0	0.0	1.2	1.8	0.0	1.4	0.6	0.0	1.3	0.7	0.7	1.6
TOTAL EMPLOYEE BENEFITS	461.3	297.8	12.1	9.9	21.0	20.0	14.0	14.4	37.7	20.7	17.1	52.2	34.1	44.6

TRANSPORTATION & COMMUNICATION

3110 COURIER/OTHER DELIVERY CHARGES	5.0	37.2	0.1	1.9	1.3	3.0	1.6	2.6	2.0	1.6	3.1	5.6	5.2	9.2
3111 LONG DISTANCE CHARGES	0.0	20.3	0.0	2.1	3.2	1.6	0.0	3.2	2.4	1.3	1.3	1.4	0.9	2.9
3112 BELL TEL. - SERVICE, EQUIPMENT	65.0	52.1	0.0	15.1	4.9	3.1	0.7	4.4	4.8	3.5	2.7	2.1	3.9	6.9
3210 POSTAGE	75.0	50.9	0.0	0.0	0.0	0.0	13.2	0.0	0.0	11.0	0.0	10.8	0.0	15.9
3410 RELOCATION EXPENSES	0.0	26.0	0.0	0.3	0.0	8.0	12.6	0.0	0.0	0.0	0.0	0.0	0.0	5.1
3610 TRAVEL - ACCOMMODATION & FOOD	205.0	47.6	0.4	3.9	3.4	3.1	0.5	3.7	7.8	6.3	3.0	2.0	2.6	10.9
3620 TRAVEL - AIR	0.0	35.2	0.2	5.2	1.5	0.8	(0.3)	1.4	4.9	4.4	3.0	3.6	1.1	9.4
3630 TRAVEL - RAIL	0.0	0.3	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
3640 TRAVEL - ROAD	0.0	17.3	0.3	1.0	1.3	0.6	0.4	1.7	1.7	1.2	1.9	1.0	1.9	4.3
3660 TRAVEL - CONFERENCES, SEMINARS	0.0	1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.6	0.1	0.2	0.1	0.0
3680 TRAVEL - ATTENDANCE (HEARINGS)	225.0	34.6	0.2	3.2	3.5	4.9	3.7	1.3	2.2	1.5	5.2	2.3	1.5	5.1
3690 TRAVEL-PROFESS. & PUB. OUTREACH	50.0	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.0	0.1
3720 TRAVEL OTHER	0.0	3.5	0.0	0.6	0.7	1.0	0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.6
3721 TRAVEL-PT VICE CHAIR & REPS	0.0	27.7	0.0	0.3	0.8	0.4	2.3	0.6	1.2	1.9	2.8	3.3	1.9	12.2
TOTAL TRANSPORTATION & COMMUNI	625.0	354.6	1.2	33.7	20.6	26.6	35.3	18.9	27.0	33.3	23.3	32.8	19.1	82.8

(000, NI)

TOTAL EXPENDITURES	9,858.8	6,267.7	77.4	477.6	429.6	392.8	401.1	777.6	605.5	448.7	480.3	446.8	671.0	1059.5
--------------------	---------	---------	------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	--------

Workers' Compensation Appeals Tribunal
505 University Avenue, 7th Floor, Toronto, Ont. M5G 1X4
Telephone: (416) 598-4638

CAZON
L 95
-R28

Workers' Compensation
Appeals Tribunal

Tribunal d'appel
des accidents du travail

THIRD REPORT

1987-1988



FRANÇAIS AU VERSO

WORKERS' COMPENSATION APPEALS TRIBUNAL
THIRD REPORT
1987 - 1988

505 University Avenue
7th Floor
Toronto, ON
M5G 1X4
(416) 598-4638

TABLE OF CONTENTS

INTRODUCTION	1
ACKNOWLEDGEMENTS	1
THE CHAIRMAN'S OVERVIEW	3
THE TRIBUNAL'S OVERALL PERFORMANCE	3
DELAYS IN DECISION-WRITING	4
AVERAGE OVERALL TURNAROUND TIME	4
A REVIEW OF TRIBUNAL EXPENDITURES	5
STATEMENT OF MISSION, GOALS AND COMMITMENTS	8
THE DETAILED REPORT	9
A THE REPORTING PERIOD	9
B CHANGES IN THE ROSTER OF TRIBUNAL VICE-CHAIRS AND MEMBERS	9
C THE RELATIONSHIP WITH THE BOARD	10
D THE FINAL SAY: THE MOST RECENT DEVELOPMENTS	10
E THE RELATIONSHIP WITH THE OMBUDSMAN	12
F ADMINISTRATION AND PROCESS	13
1. Highlights	13
2. The Computer	14
3. The Case Management System	15
4. Staffing	16
5. Mail Room and Records	16
6. Word Processing	16
7. Intake	16
8. Tribunal Counsel Office	17
9. Scheduling	18
10. The Four-Month Goal	18
11. The Counsel to the Chairman's Office	18
12. Out-of-Toronto Hearings	19
13. Representation at Hearings	19
G INFORMATION DEPARTMENT	19
1. Library	19
2. Publications	20
H CASELOAD AND PRODUCTION	21
1. The Incoming Caseload	21
2. The Tribunal's Production	21
I OUTREACH AND TRAINING	21
J FRENCH LANGUAGE SERVICES	22
K ISSUES ADDRESSED DURING THE REPORTING PERIOD	22
1. Pension Assessments	22
2. Pension Supplements	23
3. Occupational Disease	23
4. Occupational Stress	23
5. Time Problems	24
6. Section 15, The Right to Sue	24
7. Others	25

L FINANCIAL MATTERS	25
1. The Finance and Administration Committee	25
2. 1989 Budget Preparation	25
3. Audits	25
4. Financial Statements for April 1, 1987, to March 30, 1988, and for April 1, 1988, to December 31, 1988	25

TABLE OF APPENDICES

APPENDIX A	
Statement of Mission, Goals and Commitments	i
APPENDIX B	
Tribunal Members Active During The Reporting Period	viii
APPENDIX C	
Details of the Developing Relationship with the Board	xxx
Schedule 1: Practice Direction No.9	xxv
APPENDIX D	
Incoming Caseload Statistics	xxx
APPENDIX E	
Caseload Statistics	xxxiv
APPENDIX F	
Financial Statements for Fiscal Periods	xxxviii
APPENDIX G	
Profile of Representation	xliii
APPENDIX H	
Weekly Workload Statistics	xliv

INTRODUCTION

The Workers' Compensation Appeal Tribunal is a tripartite tribunal established in October 1985, to hear and determine appeals from decisions of the Ontario Workers' Compensation Board. It is an independent tribunal separate and apart from the Board itself.

This report is the Tribunal Chairman's annual report to the Minister of Labour and to the Tribunal's various constituencies. It is the third such report. As was the case in the previous two reports, it is my intention in this report to record the Tribunal's progress over the reporting period and to report on matters which, in my view, are likely to be of special interest or concern to the Minister or to one or more of the Tribunal's constituencies.

The two previous annual reports -- the "*First Report*" and the "*Second Report*" -- covered the Tribunal's anniversary periods (respectively, October 1, 1985, to September 30, 1986, and October 1, 1986, to September 30, 1987). It has always been intended, however, to eventually move to fiscal-period reporting and with this report that transition is made.

The transition is complicated by the fact that the Tribunal is in the process of changing its fiscal period. As of January 1, 1989, we are moving from the Government's standard fiscal period of April 1 to March 30, to a calendar-year fiscal period. (This will bring the Tribunal's budgeting period into line with the WCB's budgeting period. This is appropriate since the Tribunal's funding comes from the WCB Accident Fund). In these circumstances, to change to fiscal-period reporting without leaving a gap in the reporting it is necessary for this report to cover the period from October 1, 1987, to December 30, 1988 -- a 15-month period. Starting in 1989, annual reports will cover the calendar-year fiscal period.

As mentioned in previous reports, the Tribunal's annual report is the report of the Chairman and not of the Tribunal as such. By that is meant, particularly, that in respect of this report, as with the previous reports, I have not sought my colleagues' approval for the subjective content. As I have said in respect of earlier reports, I do believe that the opinions in this report will be found, for the most part, to be generally shared by the members of the Tribunal, and where I have particular reason not to be confident on that score I have so indicated.

The making of what is, in effect, a personal report from the Tribunal Chairman to the Minister of Labour and to the Tribunal's various constituencies arises from the fact that the responsibility for the creation and operation of the Appeals Tribunal is assigned by the legislation to the Tribunal Chairman rather than to the Tribunal per se.

ACKNOWLEDGEMENTS

The performance of the Tribunal continues, of course, to reflect the talent and commitment of its vice-chairs, members and staff. There is a general tendency to undervalue the contribution of administrative tribunal vice-chairs and members. A more dominant role in a tribunal's adjudicative activities is typically attributed to the chair of a tribunal than any realistic assessment of the inherent limits of his or her personal involvement and influence would suggest was reasonable. The Appeals Tribunal has been favoured throughout its short life with a complement of exceptionally talented and committed vice-chairs, employer and worker members and staff and it is this, more than any other thing, which accounts for the Tribunal's achievements. On the subject of acknowledgements, I would be remiss were I not to mention the continuing co-operation and assistance that I and the Tribunal have received from the Minister and Ministry of Labour and their respective staff and, as well, from the Chairman of the Workers' Compensation Board and the Board's staff.

This reporting period saw a number of transitions within the Tribunal's senior ranks and it is appropriate to recognize the special contribution of three particular individuals who played especially key roles in the Tribunal's formative years and who have now moved on to other responsibilities.

The departure from the Tribunal in April 1988 of the Tribunal's first Alternate Chairman, *James R. Thomas*, marked the end of a professional collaboration which contributed in a major way to the Tribunal's successful launch. As I have said in previous reports, from the outset Jim Thomas was my partner in this venture. The appointment in June 1988, of his successor, *Laura Bradbury*, one of the Tribunal's original vice-chairs, marked the beginning of a new collaboration which promises to be of comparable importance.

David Starkman was the Tribunal's first General Counsel, serving in that capacity during the first three years of the Tribunal's life. He left that position in September 1988 to accept appointment as one of the Tribunal's vice-chairmen. As General Counsel, Mr. Starkman's special contributions included the development and operation of the new and contentious concept of the Tribunal Counsel Office, the stewardship of the Tribunal's operational interface with the communities of workers' and employers' representatives, and the building of the constructive working relationship between the Tribunal and the WCB at the staff level. Throughout the Tribunal's formative years David Starkman was a major influence. *Elaine Newman*, a former vice-chair is the Tribunal's new General Counsel.

Maureen Kenny was Counsel to the Chairman from October 1985, until she elected to move into a vice-chair position at the Tribunal in July 1987. As Counsel to the Chairman, Ms. Kenny was responsible for, among other things, the operation of the Tribunal's process for reviewing draft decisions (described in the First Report). In that capacity, during the period of issue-overload that marked especially the Tribunal's first two years of operation she was, in all matters of intellectual moment, the chair's, vice-chairs' and members' mentor and editor. Her contribution in that role to the standards of decision-writing was a major factor in the Tribunal's development. *Carole Trethewey* joined the Tribunal in January 1988, as Ms Kenny's successor, and in her hands the office of the Counsel to the Chairman continues its significant role.

THE CHAIRMAN'S OVERVIEW

THE TRIBUNAL'S OVERALL PERFORMANCE

I continue to subscribe to the views I expressed in the Second Report concerning the fairness, effectiveness and appropriateness of the Tribunal's adjudication processes, and as to the quality and usefulness of the Tribunal's decisions. The tripartite element in the Tribunal's design remains strong and highly influential.

In the employer community, concerns about how the Tribunal views its mandate and its relationship with the WCB, and the question of whether, in the workers' compensation field, the idea of an external appeals tribunal is, in principle, really a viable concept at all, appear to be continuing pre-occupations. The latter question seems, with great respect, to really reflect a concern as to whether the system can in fact afford the cost of the legislated benefits if the rights to them are to be determined by a truly objective application of the actual law.

As far as the worker community is concerned, as the proportion of successful appeals -- as reported by the WCB -- trends downward, one senses that that community is beginning to worry whether the Appeals Tribunal might be in the process of being co-opted -- if, perhaps, only subconsciously -- by the Board and the compensation system.

It will come as no surprise that the experience to date has for me confirmed my original view that, in the society in which we now live, for a workers' compensation system to be appropriate in principle and in the long run to be acceptable in practice, it must be and be seen to be governed by the rule of law. The experience of this Tribunal has shown, I believe, that an external appeals tribunal is an essential prerequisite to that end.

I remain confident that the relationship between the Appeals Tribunal and the WCB will continue to develop constructively and that the mature relationship which may be expected to emerge from the present developmental phase will be sensible and viable.

As far as the possibility of co-option is concerned, it is well understood that system co-option of any supervising agency is inherently always a risk. In the workers' compensation system that risk runs side-by-side with the risks of Tribunal co-option by the worker or employer communities. All a tribunal can do is to arm itself against such tendencies by maintaining in the minds of its members a lively consciousness of the inherent dangers.

The downward trend in the proportion of appeals which are successful, in fact reflects, I believe, the natural result of an external appeals tribunal's inherent influence on the Board's adjudication processes. It is no reflection on the previous WCB administration to recognize that the introduction of an external appeals mechanism in which the decisions of Board adjudicators are, routinely, publicly reviewed by experienced, outside experts was bound to lead to more carefully considered -- and thus better -- Board adjudication. The improved quality of written reasons in the Hearings Officers' decisions which is increasingly the subject of comment within the Tribunal is the most obvious evidence of that developing reality. The presence of an external appeals tribunal also has a natural influence on the care the Board takes to ensure that the requirements of the Act are reflected in new policy initiatives.

The Board's statistics indicate that in respect of cases involving questions of entitlement or quantum, successful appeals are increasingly, predominately attributable to differences only in the findings of fact. Cases in which successful appeals are attributable to differences between the Board and the Appeals Tribunal in the interpretation of law or policy are now relatively uncommon -- in the order of only 10 per cent of all successful appeals.

As the Tribunal's and Board's views of the law increasingly converge -- not through co-option of

the Tribunal by the Board (or visa-versa) but through the continuous, and public, reasoned review of legal issues by both the Board and the Tribunal which the system now promotes -- the proportion of appeals which turn on differences concerning issues of law or policy will continue to diminish. Increasingly, the proportion of successful appeals will reflect only the baseline tendency in contentious cases for single Hearings Officers and tripartite Tribunal hearing panels (often working with more developed evidence) to differ in their respective interpretation of the evidence regarding the medical or other facts in a case. The trends now emerging from the Board's data suggest to me that in the long term the proportion of appeals which are successful may be expected, in entitlement or quantum cases, to settle ultimately at around the 30 to 35 per cent level.

DELAYS IN DECISION-WRITING

Delays in the decision-writing process after the hearing has been completed -- a persisting consequence of the Tribunal's birthing process to which I made considerable reference in the Second Report -- is, I am pleased to report, no longer a problem.

In the calendar year 1988, there were 781 hearings for which decisions were released by year-end. The average completion time for these decisions from the point when the decision was ready to be written to the date of its release was 69 days (2.3 months). These included cases involving panels chaired by both full- and part-time vice-chairs. If only the decisions by panels chaired by full-time vice-chairs are counted, the average release-time drops to 50 days (1.7 months). For administrative reasons, decisions drafted by part-time vice-chairs will always take somewhat longer to complete.

In my opening remarks on the occasion of the Tribunal's third annual appearance before the Legislative Standing Committee on Resources Development (on May 26, 1988, reported in Hansard, vol. R-8, p. R-183), I made extensive reference to the decision-delay problem. I made particular mention at that time of the special problem the Tribunal was experiencing in completing decisions in a batch of particularly old cases. At that time, that batch consisted of approximately 100 cases. By the end of the reporting period all but eight of those cases had been released.

An important overall indicator of the substantial reduction in the decision-making time experienced throughout the Tribunal since the Second Report is the fact that the current inventory of cases ready-to-write but not-yet-released has decreased over the reporting period from 525 (in October 1987) to 270 (in December 1988).

AVERAGE OVERALL TURNAROUND TIME

On the question of the total time that it takes for a case to typically make its way through the Tribunal's complete process -- from filing of the appeal to release of the decision after completion of the hearing -- concerns continue to be expressed by the worker and employer communities. The Minister of Labour has been particularly interested in ensuring that all possible measures for reducing the average turnaround time have been exhausted.

The Tribunal, of course, has had the turnaround question under continual review, and in June 1988, I was able to respond to the Minister's concern by indicating that I thought it was now possible that the Tribunal could re-organize its procedures, in particular its pre-hearing procedures, in such a way as to reduce its overall average turnaround time to four months. This was possible, I had by then, come to believe, without affecting the appropriateness or effectiveness of the adjudicative process or the quality of the Tribunal's decisions.

The re-structuring of the Tribunal's procedures with a view to achieving an average turnaround time of four months is now being implemented. The restructuring which has been implemented or at least approved as of the end of the reporting period may be summarized as follows:

1. Appeals are now not processed until representatives have confirmed that they are ready to proceed, and all the necessary administrative information has been provided on a Hearing Application Form.
2. Case descriptions are to be prepared by the Tribunal Counsel Office, in a simplified, standardized format, at the beginning of the process. Where necessary, additional preparation or work-up by TCO will take place after the case description has been completed. In that event, the case description will be augmented by subsequent addenda.
3. The scheduling of the hearing date will proceed as soon as the case description is released. Additional preparation or work-up will, therefore, now be performed, working against a fixed hearing date.
4. Hearings in Toronto will be scheduled within six weeks after the parties receive the case description. If the parties cannot agree on a date within that period, the Scheduling Department will assign a date.
5. Decision release is targeted for six weeks from the date of the hearing or six weeks following the receipt of post-hearing evidence and submissions. The target will not be realistic in all cases, but the system will require internal explanations if the target is to be substantially exceeded.

By the end of the reporting period, persons now appealing questions of entitlement and quantum not involving especially difficult or novel issues, and which do not require further medical or other investigation, and who are themselves able to proceed as quickly as possible, can expect to have a hearing of their appeal in Toronto completed within two and one-half months of completion of the application form, and to receive a decision within another one and one-half months. Section 77 and section 21 appeals can now typically be heard and disposed of within three to four weeks.

These projections apply only to Toronto hearings. Hearings held in out-of-Toronto locations are usually subject to additional scheduling time, as it is impracticable to schedule hearings in those locations on an everyday basis.

It is too early to be confident that the goal of an average four month turnaround time for all cases heard in Toronto is, in fact, wholly achievable, but definite progress in that direction is now being made.

A REVIEW OF TRIBUNAL EXPENDITURES

How much the Tribunal is costing and whether the Tribunal's management is providing adequate fiscal control are questions which are naturally of continuing special interest, particularly to the employer community. They are also questions which have been awkward to address during the years when the Tribunal was being created from scratch. To date we have responded to those concerns by merely publishing our financial statements and budgets.

During the period covered by this report, however, the Tribunal believes that it came to the end of its developmental period. It reached the point where for purposes of budgeting and control of the growth of expenditures it was right to recognize that the Tribunal should now be considered a mature organization. The 1988/89 operating budget (submitted to the Minister of Labour in

December 1987), represents a resource base which should now be regarded, from an overall perspective, as generally sufficient for the Tribunal to meet its current statutory responsibilities.

In a memorandum from the Chairman to the Tribunal's Standing-Committee Chairs and the Tribunal's Department Heads in April 1988, that proposition was expressed in the following terms:

We have reached the point where it seems at least a reasonable tactic of fiscal responsibility, as we head into the development of the 1989 calendar year budget, to adopt as an operating premise the assumption that the organization has at this point reached the point of maturity and that the budget of 1988/89 represents a resource base that is, from an overall perspective, sufficient for the Tribunal to meet its responsibilities.

That assumption may in due time prove to have been premature. However, we have, in my opinion and in the opinion of the Finance and Administration Committee and of the Executive Committee, reached the stage where if we do not draw a line and begin to manage the growth of our resource requirements in a manner appropriate to a mature, as opposed to an experimental, organization, we begin to risk confusing needs with wants.

The development of the 1989 budget was also the occasion for the Tribunal to engage in an especially thorough review of its financial requirements. This seems, therefore, a time when it would be appropriate to provide a more accessible public record of the Tribunal's fiscal management during its developmental stage.

The development of the Tribunal's organization involved three major phases. It began with the *theoretical formulation* of the Tribunal in the summer of 1985, during my time as Chairman, pro tem. That formulation was based on no more than speculation about all of the operating variables -- incoming caseload, preparation time, hearing time, decision-writing time, etc. No hard information about any of these cost-determining factors was available and none could be developed until the Tribunal was in operation. The formulation was doubly problematic because it was focussed on an adjudication model that was novel and untested. (The adjudication model was novel because the Tribunal's adjudication assignment, as defined by the legislation and by the operating circumstances of an external appeals tribunal in the workers' compensation field in Ontario in 1985, was unprecedented.)

In October 1985, the Tribunal began operations and thereupon embarked on the *experimental phase* of its development. The chairman and alternate chairman took up their positions on a full-time basis on October 1, 1985, and the first round of Order-in-Council appointments of panel members and vice-chairmen was made early in October. The recruitment and training of staff and the requisition of materials and equipment all commenced, for all practical purposes, on October 1. The Tribunal's first hearing was held in November 1985, and a few more were held in December of that year. The first decision was issued on December 9, 1985. The number of hearings gradually built up over the ensuing months, and in September 1986, when the second round of Order-in-Council appointments came on stream, the Tribunal finally came to the end of its experimental phase and reached, for the first time, what could be regarded as a truly operational status. During the experimental phase, the adjudication process and the organization of the support services that served it were constantly adjusted in response to the developing experience.

In or about October 1986, the Tribunal began what can be appropriately labelled the *testing phase*. We had finally settled on the main features of the adjudicative and administrative structure, and it was now possible to begin to test the capacities of that structure in a fully operational mode.

This testing phase led to the identification of resource deficiencies in various areas of the organization and to a number of adjustments in that regard, many of which were dealt with in the 1988/89 budget submission in December 1987. As indicated above, we believe it is right to recognize that in or about April 1988, about two and a half years after its creation, the Tribunal could properly be said to have emerged from the testing phase and to have become a mature organization.

The one reservation which I have with respect to the last conclusion concerns the Tribunal's computer facilities. The computer systems, and particularly the case management system, are still in the experimental phase. We are approaching, but have not yet reached, a point of decision concerning computer system enhancements and the nature of the Tribunal's future use of computers. This decision will have considerable capital cost implications, and the Tribunal cannot be said to have been fully defined as far as its structure and systems are concerned until that decision is made.

As most people will by now understand, the Tribunal's expenses are paid out of the WCB's Accident Fund. However, to protect the Tribunal's independence, Tribunal budgets do not require WCB approval. In the Memorandum of Understanding with the Minister of Labour, the Tribunal Chairman has agreed to submit Tribunal budgets to the Minister of Labour for approval.

The Tribunal's first budget covered the six-month period from October 1, 1985, to March 30, 1986 -- the end of the Government's fiscal period. The budgeted operating costs (I will refer here only to operating costs and deal later with the capital costs) for this first six-month period, which, in the nature of things, reflected no more than a series of educated guesses, was \$3.68 million. The Tribunal's actual operating expenditure during that period was \$1.24 million.

The second budget, which was submitted in January 1986, at a time when our experience with the operation of the Tribunal was still rudimentary, and which covered the full fiscal period April 1, 1986, to March 30, 1987, was \$7.69 million. The Tribunal's actual operating expenditure for that period was \$5.71 million.

The third budget, prepared in November 1986 -- only about four months into the testing period -- covered the fiscal period, April 1, 1987, to March 31, 1988. The operating expenditure figure in that budget was \$8.23 million, and the actual expenditures for that period turned out to be \$7.38 million.

The 1988/89 budget, prepared in December 1987, was the first budget to be prepared with the advantage of a realistic operating experience adequate for the purpose. That budget covered the period April 1, 1988 to March 31, 1989. The operating expenditure figure in that budget was \$8.38 million. As will be seen from the financial reports which appear later in this Report, the decision to move to a calendar-year fiscal period was taken in the middle of the 1988/89 fiscal period and, for that purpose, the 1988/89 budget was ultimately reworked to cover only the nine-month period from April 1, 1988, to December 31, 1988. The pro-rated operating expenditure budgeted for that period was \$6.28 million. During that period the Tribunal actually spent \$5.98 million.

The Tribunal's total capital expenditure from October 1, 1985, to the end of this reporting period, is \$2.42 million.

STATEMENT OF MISSION, GOALS AND COMMITMENTS

The special study of the Tribunal's budget undertaken in the course of preparing the 1989 calendar-year budget was the occasion for the Tribunal to review its mission, goals and commitments. A formal Statement of Mission, Goals and Commitments was officially adopted by the Tribunal effective October 1, 1988 -- the Tribunal's third anniversary. That statement represents a carefully considered Tribunal-wide view of the Tribunal's basic mandate as that mandate is understood after three years of operational experience. It is, if you will, a charter of the Appeals Tribunal's obligations and goals.

The approved Statement may be found in *Appendix A*.

THE DETAILED REPORT

A. THE REPORTING PERIOD

This report covers the fifteen months from October 1, 1987, to December 31, 1988. The reasons for this extended reporting period have been explained in the Introduction.

B. CHANGES IN THE ROSTER OF TRIBUNAL VICE-CHAIRS AND MEMBERS

During the reporting period, there were a number of changes in the roster of vice-chairmen and employer and Worker Members. In addition to the changes noted in *Appendix B*, a number of other changes occurred.

Four, new, full-time vice-chairs were appointed during the reporting period. One of these was appointed to a new position, and three were appointed to fill vacancies caused by resignations.

The one appointment to a new position was forecast in the Second Report. In that Report, I noted that provisional arrangements for two possible, additional, full-time vice-chair positions had been made in the 1986/87 Tribunal Budget, and that one of these had been filled in August 1987. The need to fill the second position became apparent towards the end of 1987.

The three vacancies were created by the appointment of Kathleen O'Neil to the Ontario Labour Relations Board, Jim Thomas' resignation to take up a senior position with the Ontario Government, and the resignation of Elaine Newman to accept appointment as the Tribunal's General Counsel upon the resignation from that position of David Starkman.

Jean Guy Bigras, who had originally been appointed a part-time vice-chair on May 14, 1986, was appointed to the second new full-time vice-chair position on December 17, 1987.

The three vacancies were filled as follows:

John Moore, originally appointed as a part-time vice-chair on July 16, 1986, was appointed full-time on May 1, 1988; David Starkman, who had previously been the Tribunal's General Counsel, was appointed on August 1, 1988, to fill the vacancy created by Laura Bradbury's move into the Alternate Chairman's position upon the departure of Jim Thomas; and Zeynep Onen, formerly the Senior Counsel in the Tribunal Counsel Office, was appointed to take Elaine Newman's vice-chair position on October 1, 1988.

The filling of the second new position brought the Tribunal's total of full-time vice-chairman to ten (including the Alternate Chairman who is also a vice-chair).

Amongst the full-time employer and worker Member positions, four adjustments occurred. Frances Lankin, formerly a full-time Member representative of workers accepted a full-time position at O.P.S.E.U., and was appointed a part-time worker Member on February 25, 1988. The vacancy in the full-time worker Member positions created by this move led to the appointment on June 11, 1988, of Ray Lebert, who, prior to his appointment, had been Financial Secretary-Treasurer of C.A.W. Local 444, and had been extensively involved in the C.A.W.'s workers' compensation activities. David Mason's retirement, on September 30, 1988, from his full-time position as a Member representative of employers was the occasion for the change of Martin Meslin's part-time appointment as employer Member to a full-time appointment on August 1, 1988.

Some additions to the part-time roster of appointments also occurred during this period. Marsha Faubert, Karl Friedmann, and Joy McGrath were appointed part-time vice-chairs. Mark Gabinet, Sara Sutherland, Gerry Nipshagen and Allen Merritt were appointed part-time members representative of Employers. As previously noted, Frances Lankin was appointed a part-time Member representative of workers.

A list of all active Tribunal vice-chairmen and members together with a short resume for each may be found in *Appendix B* to this report.

C. THE RELATIONSHIP WITH THE BOARD

During this reporting period, the relationship between the WCB and the Appeals Tribunal has continued to evolve. It remains co-operative and constructive despite the challenges posed by a series of interactions between the Board and the Tribunal around a number of key, substantive compensation issues. An account of these interactions is important if the nature of this developing relationship is to be understood. Since this relationship is of central importance to the appeals system, I have thought it important to provide a full account, and because of the fullness of that account I have also thought it sensible to put that account in *Appendix C* of this report, where interested readers may find it, and others will not be troubled by its length.

D. THE FINAL SAY: THE MOST RECENT DEVELOPMENTS

At the end of the reporting period covered by The Second Report the question which arises under the terms of section 86n of the Act as to who, between the WCB Board of Directors and the Appeals Tribunal, has the final say on issues of general law and policy had not been resolved. No occasion for the Tribunal to interpret the section had arisen. Thus this crucial final piece of the overall, system design had not yet fallen into place.

As of the end of the second reporting period, it had appeared that such an occasion was imminent in the board of directors' 86n review of the Tribunal's *Decision No. 72* (July 21/86).

Decision No. 72 was the decision in which the Tribunal held that a sudden unexpected injury -- such as a disc protrusion in the back -- occurring in the ordinary course of a worker's routine employment activities was a personal injury by chance event as that condition is defined in the *Workers' Compensation Act*. The decision followed Canadian and English judicial authorities in holding that a chance event could be either an unexpected cause or an unexpected result.

Decision No. 72 had been the focus of very considerable controversy in the employer community in Ontario, and it was the first case which the WCB board of directors elected to review under the provisions of section 86n.

The board of directors' review decision issued on September 28, 1988. The majority of the board disagreed with the Appeals Tribunal's application of the above-mentioned judicial authority. Noting certain differences in the textual context between the Workers' Compensation Act as it presently exists in Ontario, and the legislation considered by the Supreme Court of Canada, and the English Court of Appeal and House of Lords in decisions relied on by the Appeals Tribunal, the board concluded that those decisions were properly distinguishable and not applicable to the Ontario Act.

Part of the textual difference to which the board of directors' decision referred was the

introduction in the Ontario Act in 1965 of the "disablement" element of the definition of "accident". Previously, the definition of accident had included only chance events and wilful misconduct (not being the conduct of the worker). The 1965 amendment had expanded the definition to make it explicit that injuries arising out of employment were compensable whether or not an accident in the nature of an external chance event had occurred.

At first blush, it would not, therefore, seem to matter whether an injury was seen to be caused by an accident in the nature of a chance event or by an accident in the nature of a disablement. Both would be "injuries by accident" within the meaning of section 3(1). However, there is a practical reason why it is important to determine whether sudden and unexpected injuries not caused by any external chance event fall within the chance-event branch or the disablement branch of the definition of accident. The reason is that if they fall within the former, the worker has the advantage of a statutory presumption whereby sudden injuries occurring in the course of employment are deemed to have arisen out of employment, unless the contrary can be shown. The presumption clause (section 3(3)) does not apply to causes of injuries within the disablement branch of the definition. In *Decision No. 72*, the Hearing Panel had applied the chance-event part of the definition of accident and had relied on the presumption clause in finding that the worker's injury had arisen out of her employment.

Appreciation of the foregoing detail concerning the *Decision No. 72* issue is necessary context for understanding the events which have followed the board of directors decision in its 86n review of *Decision No. 72*.

The board of directors' decision was unexpected in one particular. Notwithstanding that it had concluded that the Tribunal had been wrong in its interpretation of the definition of accident as it applied to sudden injuries not associated with external chance events, the board of directors did not direct the Tribunal to reconsider the case in the light of the boards' different determination on that issue, as section 86n provides.

The board's reason for not directing a reconsideration under these circumstances was the fact that the worker had been the butt of a prolonged and complicated process the predominant purpose of which was not determination of her particular rights but the settling of a fundamental principle of general importance to the system at large. The board thought it inappropriate in these circumstances to subject the worker to the further extended period of anxiety which would be involved if the Tribunal were directed to reconsider its decision. The board directed that the cost of the benefits not be assessed against the account of the worker's employer but that it be absorbed under the WCB's SIEF fund.

Despite the WCB's board of directors' decision not to direct the Appeals Tribunal to reconsider *Decision No. 72*, the WCB's staff's position was that the determination of the majority of the board of directors on the issue of interpretation in *Decision No. 72* would now govern the WCB's decisions in future similar cases and should govern the Tribunal's future decisions as well. The board of directors' decision did not itself address the question of the effect of its decision on future cases.

The board of directors' decision not to direct a reconsideration of *Decision No. 72* meant that the Appeals Tribunal was not called on to consider in that case whether section 86n(1) gives the final say on issues of policy and general law to the Tribunal or to the board of directors. At the same time, however, the Board's staff had begun to operate the Board's adjudication system on the basis of the staff's view that the section gives the final say to the board of directors.

In these circumstances, as Chairman of the Tribunal, I was concerned that the public should be aware of the issues raised by the board of directors' decision which from the Tribunal's perspective were still outstanding. I was also interested in providing the worker and employer communities with an opportunity to make their position on those issues known to the Tribunal panels which might be called upon to deal with the effect of the board of directors'

determination in cases involving the presumption clause and sudden and unexpected injuries not caused by external chance events.

Accordingly, I wrote the Chairman of the Workers' Compensation Board a letter which I copied to the parties and to all of the participants in the board of directors' section 86n review of *Decision No. 72*. In that letter, I identified what I saw to be the outstanding issues and invited written submissions. I indicated any submissions received would be provided to any Tribunal panel dealing with a case in which these issues arose.

The issues as I set them out in that letter read as follows:

1. Given that the WCB board of directors' determination in its 86n review of Tribunal *Decision No. 72* concerning the meaning of "personal injury by accident" differs from the Tribunal's decision in that regard, if the board had, as provided in section 86n(1), directed the Tribunal to reconsider its decision in that case in the light of that determination, would the board's determination have been binding on the Tribunal in the *Decision No. 72* case without further question?
2. If it would have been so binding on the Tribunal in the *Decision No. 72* case, is it also binding on the Tribunal in future cases of a like nature?
3. Does the fact that the board of directors did not direct the Tribunal to reconsider in *Decision No. 72* affect the answer to Question 2?
4. If the answer to question 1 or 2 is no, what, then, is the nature of the Tribunal's obligation with respect to a board of directors' determination of an issue of policy and general law pursuant to a section 86n review: In the case under review? In future cases of a like nature?

Up to the end of this Report's reporting period, no case requiring that these issues be addressed had yet arisen at the Tribunal. A number of written responses to the Chairman's letter had been received. Most of these declined the invitation to make submissions at this time and requested, instead, an opportunity to do so in the first case in which the issues arise for actual decision.

The upshot is that we come to the end of this reporting period -- into the Tribunal's fourth year of existence -- with the key issue of the ultimate effect of section 86n still unresolved.

E. THE RELATIONSHIP WITH THE OMBUDSMAN

During the reporting period, the Ombudsman brought to our attention a total of 113 complaints which he had received concerning the Tribunal's decisions. Almost without exception, these complaints concerned the substantive merits of adjudicated decisions. By the end of the reporting period the Ombudsman had completed his investigation in 37 of these cases and in all but one he concluded that the Tribunal's decision could not be said to have been unreasonable. The status of the one adverse report is discussed below.

As indicated in the Second Report, the Tribunal Chairman has conceptual difficulty with the implications for an adjudicative tribunal of the Ombudsman reviewing the *merits* of the tribunal's adjudicated decisions. This is not a difficulty, it behooves me to say, that is shared by all of the members of this Tribunal. It appears to be shared, however, by a majority of them. This conceptual problem has caused the Tribunal to consider very carefully its responses to communications from the Ombudsman as they concern complaints about the merits of its decisions.

The relationship between the Tribunal and the Ombudsman in respect of the Ombudsman's investigation of the merits of the Tribunal's adjudicated decisions was, of course, relatively

straightforward so long as the complaints were held to be unfounded. The Tribunal co-operated in such cases by providing copies of its files. However, as a matter of principle, its standard reply to the Ombudsman's standard request for an initial response to a complaint about the merits of a decision was to refer the Ombudsman to the full explanation contained in the Hearing Panel's published decision.

In the one case in which the Ombudsman's investigation lead him to support the complaint, the relationship, of course, began to take on more facets.

In any case in which the Ombudsman begins to see merit in a complaint, the Ombudsman's first step beyond the initial investigation is a letter to the organization against which the complaint has been made indicating the Ombudsman's tentative view that the complaint has substance and giving the organization the opportunity to examine the case the Ombudsman is making and to make representations concerning the remedial recommendation which the Ombudsman is considering. The Tribunal Chairman's response to that invitation in the Tribunal's case was to indicate that with respect to a complaint about the merits of an adjudicated decision such representations from the Tribunal would not be appropriate. Either they would constitute a further defence of the decision -- thus constituting an unauthorized supplement or change in the hearing panel's published reasons -- or be concessions which the Tribunal was not authorized to make except through the proper exercise of its statutory powers to reconsider.

It is apparent that the opportunity to make representations to the Ombudsman is intended to be an opportunity for the organization in question either to persuade the Ombudsman that he has the facts wrong or has analyzed them inappropriately, or to fix a bad decision before the Ombudsman goes public with his opinion that it is a bad decision. The letter which offers this opportunity is explicit in making it clear that failing persuasive representations or other acceptable action, the Ombudsman's next step under his legislation is to finalize his decision, report to the Legislature and send a copy of the report to the Premier's Office.

Given that the Tribunal's adjudicators, while officially independent, are nonetheless effectively dependent on the Premier's Office for their re-appointment, this is a set of options which seems to put the Tribunal in what it might be argued was a rather delicate position under the law of bias with respect to any adjustment at that stage of the decision in question.

In this instance the Tribunal Chairman's response to the Ombudsman was that he did not feel the Tribunal could do anything about a potentially negative Ombudsman's report and recommendation except to wait until the Ombudsman had reached a final conclusion. At that point, the Tribunal would then consider whether the Ombudsman had identified reasons which would justify the Tribunal embarking on an exercise of its reconsideration powers, having regard to its usual criteria in that respect. The Tribunal could not allow itself to be put in the position of activating its reconsideration powers in response to the Ombudsman's tentative conclusion and thereby be seen as offering the results of that reconsideration process for the purpose of avoiding public criticism of the decision.

Just as the reporting period was drawing to a close, the Tribunal received the Ombudsman's final report in the case in question. His recommendation was that the Tribunal reconsider its decision in the case in the light of the Ombudsman's report. As of the end of the reporting period the Tribunal's response to that recommendation was still being formulated.

F ADMINISTRATION AND PROCESS

1. Highlights

During this reporting period, the Tribunal's operational experience was highlighted by the

successful drive to bring the decision-making backlog and decision-making delays under control; by the extensive staff efforts in the development of the computer case management system; by the highly successful introduction of the office automation computer system; by the appearance of the first issues of the Tribunal Reporter; by the opening of the Infomart electronic, full-text, all-cases data base, and, in the latter months, by the re-organization devoted to converting to a projected, average, total turnaround time for all cases of four months.

2. The Computer

During the summer of 1987 the Appeals Tribunal installed a Digital All-in-1 office-wide computer system to provide an electronic office environment including word processing, electronic mail, case management information and analysis, and an electronic conferencing capability.

As the computer system was being installed, all staff, vice-chairs and members were trained in its use and from the outset the level of acceptance of the computer and enthusiasm for its contribution to the Tribunal's work has been exceptionally and surprisingly high. Indeed, the demand for access to terminals from vice-chairs and members and other parts of the Tribunal almost immediately outstripped the system's planned capacity with respect to the number of terminals to be serviced by the central equipment.

In response to these pressing demands the Tribunal elected to experiment with an overload of terminals, on the premise that the computer loading was a function not only of the number of terminals but also of the nature and intensity of their use. Since the planning of any new system's capacity is always somewhat speculative concerning the nature and intensity of the use which will develop, it seemed reasonable to challenge the computer's capacity by adding terminals rather than allowing a limit on terminals to frustrate at the outset this natural and spontaneous Tribunal-wide embracement of the computer system.

The computer system was planned to service 54 terminals and we allowed the number of terminals in use to grow very quickly to a maximum of 91.

This experiment has, so far, proved successful. The extra terminals have caused reduced response times but not to a level that has discouraged use.

They have also meant that the computer system load is always too close to the computer system's capacity for comfort, but this has had the positive consequence of forcing the Tribunal to be creative and conservative in the management of the computer's use in other respects.

In the meantime, the availability of terminals to most vice-chairs, members and staff who could demonstrate a need and an interest has allowed the computer's role in the Tribunal's work to develop vigorously and naturally to the tremendous advantage of the Tribunal's productivity and effectiveness. The experience has lead us to a number of conclusions about the computer's use.

For this Tribunal the key activities in the computer system have proven to be:

(a) Word Processing and particularly the computer's ability to allow those who are drafting decisions and other documents -- vice-chairs for example, to have direct hands-on access to the document-creation process.

(b) Electronic Mail - The Tribunal reverberates with instant communications of all sorts, which has tremendously enhanced the flow and distribution of information and views. It is difficult to evaluate against concrete criteria the significance of this instant communication system, but its impact is palpable. For everyone it is now impossible to contemplate operating without it.

The Tribunal has found, on the other hand, that other components of the office automation system are not as useful. After a period of experimentation, most members and staff have reverted to paper calendars and traditional tickler systems. We have also decided against the concept of the electronic office as far as our filing systems are concerned. Concerns about our computer's capacity have led us to reject use of the computer as a permanent filing facility except with respect to templates and precedent materials and one complete file of released decisions. We have come to this decision easily, however, since the advantage of permanent, electronic files in the Tribunal's operation could not be readily demonstrated.

The conferencing facility has met with an uneven response. There seems to be a strong instinctive resistance amongst staff and members to a system which appears to have the inhuman purpose of replacing face-to-face meetings. And the level of active contributions to the electronic conferences is currently not high. The chairman, however, finds the conferencing facility an invaluable aid to his consultation processes and is confident that, over time, the obvious unique advantages of this system of electronic group consultation to an organization of this nature will lead to it becoming an integral component of the Tribunal's communication systems.

The case management component of the computer system is still under development. That system is discussed at greater length below.

3. The Case Management System

During the summer of 1987, the Appeals Tribunal embarked upon a major strategy to utilize a database management system software to manage the file information necessary to prepare a case and to undertake a hearing. This advanced file-management system was developed and tested during much of 1988. As in any development of a novel approach using state-of-the-art technology and software, problems were encountered and overcome. The objective of preparing a case management system was met, the testing undertaken to prove the system completed. Fine tuning by way of amendments to the programs was also undertaken.

The Case Management System will not only provide a clear trail of information associated with a particular case but will also provide a detailed overview of the operations of the Appeals Tribunal on a daily, weekly and monthly basis which will permit administrators to ensure that cases are moving through the system in an expeditious manner and to identify process deficiencies.

Other agencies of the Ontario Government that manage numerous files and documents as part of their administrative responsibilities have been watching closely the progress of the development and implementation of the Case Management System at the Appeals Tribunal. During late 1988, a tape of the Case Management System was prepared for an associate agency within the Ontario Government applications.

The development work has now demonstrated, however, that the Case Management System's requirement for computer capacity was underestimated at the outset, and that to implement the system on a full operational footing will in fact require a major enhancement of the Tribunal's existing computer system. It is apparent that a new decision must now be made as to whether or not that further investment can be justified. As of the end of the reporting period that decision was on hold, pending a more settled understanding of the existing computer system's capacity relative to the Tribunal's needs in the word processing, electronic mail and conferencing areas, and the re-stabilization of the Tribunal's case procedures following the changes introduced in furtherance of the four-month turnaround goal.

4. Staffing

As of the end of this reporting period the staff complement consisted of 75 regular staff, 12 contract staff, 22 full-time, and 37 part-time Order-in-Council Appointments. The Tribunal also continues to employ eight part-time Senior Medical Counsellors.

The Appeals Tribunal has developed a personnel group to deal with all staff administration matters and to co-ordinate staff recruitment. The personnel group includes the Manager of Finance and Personnel, a Personnel Officer and a Payroll and Benefits Clerk. The group provides a one-stop resource area to deal with all staffing matters at the Appeals Tribunal.

For the fiscal period of 1988, the Tribunal recruited for 29 staff positions. The vacancies occurred in the professional (lawyers and management), technical (computer operator and system trainers), and support (secretarial and clerical) areas. Twenty-six of the 29 competitions were open to public and were advertised in the Topical and other newspapers. More than 1,300 applications were received for these 29 positions, and 350 interviews were conducted.

5. Mail Room and Records

It is difficult to highlight specific areas without acknowledging that the success of an organization is based on the participation of everyone. It is important, however, to recognize the administrative and support contributions made by the Mail Room and Copy Centre, and the Records Office. Specifically the staff in these operations provide the administrative support that enables the Appeals Tribunal to undertake its daily business. The Mail Room and Copy Centre prepares 333,000 pages of copy material per month and deals with 3,600 pieces of outgoing mail per month and 2,000 pieces of incoming mail per month. The Records Room and File Room manages 3,000 case files from the Workers' Compensation Board, which are part of the active case load at the Appeals Tribunal. It is their responsibility to maintain the security of these files, to manage their availability in the Tribunal as required, and, upon completion of a hearing and release of a decision, to return the files to the appropriate sections of the Board. They also maintain the corporate file records of the Appeals Tribunal.

6. Word Processing

An important part of the decision release process, following the actual hearing at the Tribunal, is the ability of the Word Processing Centre to prepare drafts and final decisions without delay. During 1988, the Centre maintained an average turnaround time of two working days. Examples of the work are provided by the month of January 1988 with 429 decision documents and an average response time of two days. This two-day average was also evident in December 1988 with 212 decision documents prepared. The Word Processing Centre is also responsible for preparation of other case related documents in addition to the decision release material.

7. Intake

A vital link between the Tribunal processes and procedures and employers and workers seeking to appeal a Workers' Compensation Board matter before the Tribunal is the Intake Department. Intake staff are the primary contacts with people inquiring about their status to appeal a case and determine whether jurisdiction exists. Questions of interest and notices of intent to appeal occur through letters, telephone calls, and in some instances by people who arrive at the reception desk with questions or concerns. In the latter case an intake officer meets with the individual to discuss the matter and provides all possible help. At the Tribunal the reception desk is viewed as integral part of the intake work because of the wide-range of questions asked about the appeal process.

8. Tribunal Counsel Office

The role of the Tribunal Counsel Office continues to evolve. It is now accepted that the Tribunal requires its own counsel, and that counsel have an important role to play, both before and during the hearing.

(a) The Pre-Hearing Role

In the third year of operations, adoption of the four-month goal lead to restructuring of the pre-hearing administrative processes within the Tribunal Counsel Office. Present process requires that Case Descriptions be prepared according to a standardized model, and that a hearing date be set immediately upon completion of the Case Description. Case Descriptions are reviewed by senior staff to determine the adequacy of medical evidence, the need for supplementary factual information, and need for additional legal research or submissions.

The Tribunal Counsel Office has been increasingly active in preparing and maintaining up-to-date summaries of the Tribunal's decisions in respect of particular issues. These summaries, called "decision reviews", are frequently distributed to the parties and panels as reference material.

Consultation with parties and their representatives about the Tribunal's process, probable issues and applicable law continues to be an important Tribunal Counsel Office contribution to the quality and accessibility of the Tribunal's hearing process.

(b) The Role at Hearings

Controversy regarding the role of the Tribunal counsel at hearings continues to recede. Rarely is it necessary for Tribunal counsel to participate in a hearing by cross-questioning a witness. The role at hearings is clearly one of assisting the panels - commonly by orchestrating the order of the proceedings, ensuring comprehensiveness of the record, or by presenting a submission outlining the optional analyses available to the panel.

In exceptional cases, where the jurisdiction of the Appeals Tribunal is in question, or where there is some other distinct Tribunal interest at issue, Tribunal counsel are under instructions to advocate actively the position which, in their opinion, is the correct one from the Tribunal's overall perspective. This aspect of the role was discussed in *Decision No. 1091/87* (Dec. 2/87), and *Decision No. 212/88I* (Apr. 8/88).

(c) The Future

Within the Tribunal Counsel Office, as in other parts of the organization, the commitment to a high standard of quality continues to be challenged by the competing interest in efficiency and speed. The tension between these interests will continue to be the major influence in determining the agenda for further evolution of the office in the coming year.

As explained in the Second Report, the Appeals Tribunal has employed pre-hearing panels (formerly called Case Direction Panels) in order to enable the Tribunal Counsel Office to seek and obtain instructions on matters pertaining to the preparation of a case for hearing. This process continued to prove useful, and to be consistent with the model of adjudication adopted by the Appeals Tribunal. These panels (now referred to as "Instruction Panels") may be approached by members of the Tribunal Counsel Office for instruction on a variety of matters, including the necessity for referral of the worker to a medical practitioner for examination, prior to hearing.

As originally conceived this pre-hearing panel direction process contemplated that parties who objected to instructions issued to Tribunal Counsel Office by the pre-hearing panel were invited to attend and make representations to a Case Direction Panel for purposes of securing a different direction. This aspect of the process was described in the Second Report.

Experience, however, has demonstrated that parties' participation in the pre-hearing panel-direction process is not a valuable aspect of the process.

In the interests of timely pre-hearing preparation of cases, and in the interests of obtaining rulings which are sufficiently focussed on the actual requirements of the case, the Appeals Tribunal has moved to a usual practice of referring any contentious, pre-hearing question to the panel which is scheduled to hear the case. In its discretion, the hearing panel may hear submissions regarding that question as a preliminary matter before it hears the merits of the appeal, or may choose to defer the issue until the end of the hearing.

This modification to the pre-hearing process has the effect of allowing the Tribunal Counsel Office to maintain an expeditious schedule in its pre-hearing preparation of a case, achieves maximal and efficient use of resources in terms of panel time, and assures a high quality of decision-making regarding important, pre-hearing questions.

9. Scheduling

The Scheduling Department has been reorganized under the direction of an Appeals Administrator who has replaced the Hearings Co-ordinator. The new position consolidates not only the scheduling of appeals, but also the requests for adjournments, subpoenas, witness fees, and all other similar, hearing-related matters.

At the end of the reporting period, the Scheduling Department was preparing for the change from scheduling hearings on consent, to scheduling hearings without consent, if necessary, within six weeks after the parties receive the case description.

10. The Four-Month Goal

The Tribunal has resolved to provide parties with faster access to hearings and decisions, without sacrificing the quality of our decision-making process. To this end, we have focused on streamlining our internal procedures. Changes are being made across the organization to eliminate periods when files are "on hold"; to provide opportunities for several departments to work on a file at the same time; to limit the dead time between completion of the Tribunal's pre-hearing preparation and the hearing date; and to provide specific time limits within which each department is to complete its work. The sections in the report on the decision-writing process, the TCO role and the Scheduling Department, give more detailed information on the changes.

11. The Counsel to the Chairman's Office

The Office of Counsel to the Chairman continues to play an important role in maintaining the consistency and standards of the Tribunal's decisions by reviewing decisions in draft form. The Review is usually performed by Counsel, with the occasional involvement of the Chairman. The procedure has changed slightly from that discussed in the First Report, since full-time vice-chairs are now well acquainted with compensation law and principles and no longer require assistance on a regular basis. Accordingly, drafts prepared by full-time vice-chairs are only reviewed when the vice-chair identifies an issue of particular interest or significance. Otherwise, the review procedure remains as outlined in the First Report.

The type of assistance provided by the Office of Counsel to the Chairman is similar to that performed by law clerks for superior court judges. Counsel will draw the Panel's attention to relevant Tribunal decisions and related law. If this information is especially significant, the Panel will send it to the parties and invite further submissions. Counsel will also identify areas which appear incomplete or unclear in the draft and shortcomings in the adjudication process which appear on the face of the draft.

The Office of Counsel to the Chairman is careful to leave the final decision to the Panel. The general aim of the review is to ensure that decisions are not rendered in isolation, that they meet Tribunal-wide standards of quality, and that the Tribunal's case law develops as a coherent body of decisions.

12. Out-of-Toronto Hearings

During the reporting period, about 40 per cent of the Tribunal's hearings were held out of Toronto, and the requests to hold hearings outside Toronto has increased steadily. At present, nearly 50 per cent of cases arise out of Toronto. The Tribunal is examining various means by which those cases might be heard more quickly, including bringing parties to Toronto if hearing schedules become congested in particular locations.

13. Representation at Hearings

Statistics on the nature of worker and employer representation can be found in *Appendix G*.

G. INFORMATION DEPARTMENT

The Information Department has responsibility for the Library and Publication functions of the Tribunal, offering information services to WCAT staff, and members of the public.

1. Library

In its first two years of operation, the Library supplied a wide variety of services to users during a period of initial set-up and organization. In its third year, the focus of activity has shifted to improving overall access to information and resources. Research into areas such as administrative and constitutional law, workers' compensation law or policy, or the medical issues related to cases before the Tribunal, is carried out by WCAT staff using a comprehensive book, journal and government-document collection and an extensive subject vertical file which is updated daily.

The Library's holdings are supplemented by means of on-line data retrieval, interlibrary loan and use of the resources of nearby libraries.

The subject vertical files in the Library provide a selection of documents including journal articles and reports on a variety of topics relevant to issues before the Tribunal. The vertical file is continually supplemented by scanning the current literature for items of interest, by retaining copies of articles relating to particular research requests and by referencing titles in journals received in the library on subscription. Regular current awareness searches are performed on a variety of on-line databases.

Cardbox Plus information management software, is also used by the library to provide quick and easy access to indexed vertical file material and detailed summaries of Tribunal decisions prepared by the Information Department lawyers and stored in a DECISIONS database. Using

this system, details such as dates, panel names, legal and legislative citations, keywords, and text words can be searched and sorted for retrieval by staff and visitors using the library's two microcomputers.

In order to further improve access from the outside, records of the Library's book holdings are now available to other resource centres using the national UTLAS database network, and copies of the Library's databases are now available to outside users.

The Library staff provide Cardbox training and will do searches for Library users in the Library or by phone. When required, the Library will provide floppy-disk copies of the decisions database, which can be run by users equipped with Cardbox Plus software. The Canadian Centre for Occupational Health and Safety used this service to form part of their CASELAW database available through their on-line search service - CCINFO.

2. Publications

During the reporting period, the Information Department provided new and continuing publications services aimed at making the Tribunal's decisions easily available to workers, employers and their representatives.

The first four volumes of the *Workers' Compensation Appeals Tribunal Reporter* were published for the Tribunal by Carswell Legal Publications. *The Reporter* consists of bound, book-size volumes containing the full text of selected decisions together with headnotes and a keyword index prepared by the Information Department staff and various other tables and indices. For the next two years, frequency of publication will be increased in order to make decisions in the *Reporter* more current.

The Publications Department continues to index and summarize all Tribunal decisions. Each summary is circulated along with the full decision text whenever a decision is requested. These summaries form the basis for a companion database.

Select decisions are distributed biweekly to subscribers through the Decision Subscription Service. Any decision, whether included in the Subscription Service or not, may be obtained individually.

A number of indices are also available: *The Keyword Index* - an alphabetical subject word index; *The Numerical Index/Annotated Statute* - a numerical index containing keywords and summaries for all decisions, together with an annotated statute listing decisions under the sections of the Workers' Compensation Act and Regulations to which they refer; the *Section 15 Index* - a specialized index of Tribunal decisions and court cases regarding the right to bring a civil action; and the *Master List of Decisions* - a list of all decisions, with release dates and cites for the Reporter and Numerical Index. These indices are produced bi-monthly and can be obtained for a nominal charge.

The *Compensation Appeals Forum* is a journal for analysis and comment from worker and employer constituencies and other observers concerning the Tribunal's decisions, processes and general compensation principles. The Forum first appeared in October 1986. Since then, other issues have appeared, the last dated July 1988. In 1989, two more editions of the Forum are planned. The Forum is circulated free of charge.

The most recent step undertaken by Library and Publications to improve information access is the successful collaboration of Information department staff, and representatives from Southam Business Information and Communications Group Inc., a private file management service. This team has set up and activated a full-text database of WCAT decisions, known as WCAT ONLINE.

This system offers sophisticated full-text search capacities of much greater power and scope than its in-house predecessor. Currently available to WCAT members and staff, remote computer access will open up this new system to the public early in 1989.

H. CASELOAD AND PRODUCTION

1. The Incoming Caseload

The number of new cases received by the Tribunal averaged about 130 cases per month during the reporting period. Incoming caseload (not counting the inherited backlog) has decreased by about 8 per cent in each of the last two years of the Tribunal's operations.

Details of the caseload may be found in *Appendix D*.

2. The Tribunal's Production

Over the 15 months of this reporting period, the Tribunal disposed of a total of 2,441 cases. This figure included cases requiring hearings, and those considered on written material, those mediated, and those disposed of administratively. Of the 270 cases in the "ready-to-write" category as of the end of December 1988, 69 per cent are cases with a recent hearing date (0 to 4 months).

The ratio of decisions released in a month compared to hearings held in that month -- a rough indicator of whether we are winning or losing -- had stabilized at 127 per cent by December 1988 -- that is, for the last several months in the reporting period we had consistently released about 30 per cent more decisions than we have held hearings. This reflects the continuing process of improving the release times of decisions.

Further details of the Tribunal's production may be seen in *Appendix E* and *H*.

I. OUTREACH AND TRAINING

The Appeals Tribunal continues to serve its commitment to assist the worker and employer constituencies in their need to understand the Tribunal's role, and to improve their abilities to work within the appeal structure. The Outreach and Training Committee, a tripartite committee of panel members and its supporting staff, continue to receive invitations to speak at conferences, and participate at workshops and seminars.

In the past year, the Appeals Tribunal has expanded its efforts to meet the commitment toward public education. It has also modified the delivery of its presentation to a form which will enable access to as wide an audience as possible. This was accomplished, in part, by the production of a video tape dramatization of an average hearing at the Tribunal. Scripted from a variety of typical entitlement cases, the film was professionally produced and demonstrates the highlights of a typical Appeals Tribunal hearing. A facsimile of a Case Description, and workshop exercises in written form supplement the video tape for teaching purposes. Entitled, "*Final Appeal*", the tape is available on loan through the Appeals Tribunal library. Any interested group may ask the Outreach and Training Committee for a presentation to a particular audience, which is based on the video tape, or any other aspect of the workings of the Appeals Tribunals which are of interest to it.

To date, the video tape has been shown widely across the province, to a variety of conference audiences and seminar participants. The reaction of those audiences has been entirely positive.

In particular, audiences unfamiliar with the appeal system at the Tribunal express a basic understanding of the process after having seen the tape. Audiences with greater expertise have used the document to focus discussion on particular aspects of the process, or for training in their own abilities as advocates.

J. FRENCH LANGUAGE SERVICES

The French Language Services Committee undertook a number of projects during 1988 to prepare the Tribunal for the implementation of the French Language Services Act in November 1989. With the addition of French language resources and bilingual appointments, the Tribunal was able during this reporting period to conduct hearings and issue decisions in the French language.

The Tribunal has decided that it has need for a full-time translator/reviser to assist the Tribunal in meeting the needs of French language translation in the preparation of case descriptions, decisions, Public Information, and the Annual Report. At present, much of this work is sent to outside translators and consultants. It is expected to have the translator in place during the early part of 1989.

Every effort was made to prepare a strong resource base of French language material including translation of the Second Report, the Practice Direction Nos. 1 to 9, the Mission Statement and the timely release of French language decisions. Work continued on the preparation of the French language lexicon covering the special legal and medical terminology involving Tribunal decisions.

The Tribunal has also received strong support from Order-in-Council appointments and staff members in attending regular French language training sessions at the beginners, intermediate and advance levels. More than 31 individuals took advantage of the French training classes which are offered during the lunch hours and evenings.

The Tribunal recruited a bilingual Intake Clerk to assist with the French Language inquiries directed to the reception desk and intake section. This position is in addition to the bilingual secretary in the office of the Chairman and a bilingual lawyer in the Tribunal Counsel Office.

K. ISSUES ADDRESSED DURING THE REPORTING PERIOD

It would be impossible in a report of this size to review all the important issues -- legal, factual and medical -- which have been addressed by the Tribunal in the last 15 months. The following is intended to give some idea of the variety of problems which have been considered.

1. Pension Assessments

This is the first reporting period during which the Tribunal has heard appeals dealing with the adequacy of pension assessments. The inherent difficulties faced by Tribunal panels in reviewing pension assessments were discussed in detail in *Decision No. 915* (May 22/87); however, panels are now gaining experience in this area.

The usual approach taken by Tribunal panels is to determine the extent of the disability suffered at the relevant time; to compare this finding with the Board's findings on disability, and to consider whether the Board has correctly applied the rating schedule to the disability. See *Decision No. 381/88* (Sept.2/88). However, as *Decision No. 255/88* (May 19/88) noted, the review strategy in a particular case must be designed to address the facts and circumstances of that case.

Pension assessments have been confirmed in a number of cases where the independent medical evidence supported the Board's assessment. See *Decision Nos. 282/88* (May 25/88) and *255/88* (May 19/88). However, in *Decision No. 582/88* (Dec.7/88), the Panel determined that the pension assessment did not adequately reflect the role of the work accident in aggravating the worker's pre-existing condition. Similarly, in *Decision No. 603/88I* (Oct. 13/88) a reassessment was directed when the Board had failed to consider two aspects of the worker's disability.

2. Pension Supplements

The Tribunal has generally taken the position that individual circumstances which may affect the actual impact of an injury on a particular worker's earning capacity are not considered in calculating a permanent disability pension but under the provisions governing temporary supplements and older workers' supplements. *Decision No. 447/87* (Feb. 8/88), an early supplement case, suggested that the Board might not have the discretion to refuse a temporary supplement where the worker had not failed to co-operate or be available for suitable employment. However, more recent cases, such as *Decision Nos. 124/88* (July 28/88), *212/88* (Aug. 22/88), and *349/88* (July 27/88) have preferred the analysis set out in *Decision No. 915* and have held that the board has a discretion. However, where the Board does not set up a rehabilitation program, a worker may still be entitled to a temporary supplement where he conducts himself in a manner consistent with the general aim of returning to work or lessening his disability. See, for example, *Decision No. 548/87* (July 21/87). Other decisions have addressed such issues as the worker's earning capacity. See *Decision Nos. 670/87* (Aug. 19/87), *638/88* (Nov. 9/88) and *510/88* (Nov. 9/88).

3. Occupational Disease

Disabilities arising from exposure to chemicals or particular work processes have also been an area of concern. Tribunal panels have found that there are two ways of approaching such cases, either under the statutory definition of "industrial disease" and related provisions, or as a "disablement" arising out of and in the course of employment. As *Decision No. 850* (Mar.2/88) noted, the statutory definition of "industrial disease" appears to contemplate a complex medical and scientific analysis of whether a disease was "peculiar" to a particular process. The Tribunal has generally indicated that the Industrial Disease Standards Panel is better equipped to deal with this sort of question and focused on the process of disablement in the case before it. Interesting examples of this approach are *Decision No. 31/88* (Nov. 30/88), which involved a "chemical cocktail", *Decision No. 214/88* (May 13/88), which considered "sealed building" syndrome, and *Decision No. 1296/87* (May 20/88), which involved lung cancer and exposure to chromium. In deciding such claims, the Tribunal applies the usual test of whether the worker's employment was a significant contributing factor to the disability. Thus, a worker who smokes and developed lung cancer will still be entitled to compensation if his or her work was also a significant contributing factor. See *Decision No. 1296/87* (May 20/88). However, compensation has been denied in cases where the worker smoked and the evidence was "equivocal at best" that the work place contributed to the worker's condition. See *Decision No. 138/87* (Apr.1/88). *Decision No. 421/87* (Apr. 22/88) is one of the few cases to consider the statutory provisions governing "industrial diseases," and the effect of the s.122(9) presumption on scheduled "industrial diseases." It contains an interesting discussion about the differences between the medical and legal approaches to causation.

The statutory provisions governing who is entitled to notice in an "industrial disease" case were reviewed in *Decision No. 140/87* (Nov. 15/88).

4. Occupational Stress

A related issue which has received some publicity is occupational stress. A number of decisions have indicated that disability caused by occupational stress is not in principle barred from compensation; however, no case has as yet granted compensation for a claim based solely on stress. *Decision No. 828* (Jan. 9/87) allowed a claim where stress was one of several occupational factors leading to the disability.

Occupational stress was most fully discussed in *Decision No. 918* (July 8/88). That Panel found that stress could be compensable under either the "industrial disease" or "disablement" concepts. Again, the more extensive evidence necessary to meet the statutory definition of "industrial disease", caused the Panel to analyze the claim as a "disablement". The majority noted the evidentiary difficulties in determining whether work was a significant contributing factor in a mental stress case, given the multitude of non-work sources of stress. In determining whether the work was a significant contributing factor, the majority suggested a two-step enquiry:

- (a) Was the worker subjected to workplace stress demonstrably greater than that experienced by the average worker?
- (b) If not, was there "clear and convincing evidence" that the ordinary and usual workplace stress predominated in producing the injury.

The majority concluded that it had not been demonstrated that the worker's disability was due to the workplace stress. The minority viewed the evidence differently and also questioned whether the majority had changed the standard of proof required to establish a claim.

5. Time Problems

The Tribunal has also dealt with the difficulties posed by the absence of limitation periods and the effect of changes in statutory language. *Decision No. 483/88* (Nov. 18/88) coped with the difficulties posed by a fatal accident which was not fully investigated when it occurred in 1927, and found that an orphan who had never known her father, was entitled to compensation. And *Decision No. 765* (Oct. 3/88) analyzed the legal complexities of a statutory amendment affecting a claimant's status and whether the amendment should apply retroactively or retrospectively.

Decision 915A, reviewed the common law of retroactivity and its effect on overrulings of previously accepted medical and legal positions.

6. Section 15, The Right to Sue

The Tribunal also considered in many cases, the "flip-side" of a compensation claim -- the removal of the right to sue. *Decision Nos. 490/88I* (Aug. 2/88) and *485/88* (Oct.28/88) have considered the statutory definitions of "dependants" and "members of family" and reviewed the question of whether a person's rights could be removed even though he or she was not entitled to receive compensation benefits.

The effect of the Act on other possible causes of action, such as claims for products' liability, occupiers' liability, breach of contract and property damage, has been considered in several cases, including *Decision Nos. 432/88* (Oct.5/88), *965/87I* (May 20/88), *1266/87* (May 11/88), *503/87* (May 16/88), *259/88* (June 22/88) and others.

7. Others

The Tribunal has also been concerned during the reporting period with the compensability of on-the-job heart attacks; with further development of its understanding of the concept of "arising out of and in the course of employment" in various situations; with the difficulty of distinguishing chronic-pain from psychological cases; with the difficulties of cases involving in-resident workers; with the ongoing problems of parking lot cases; etc.

L. FINANCIAL MATTERS

1. The Finance and Administration Committee

The Finance and Administration Committee is a tripartite standing committee of the Tribunal currently chaired by an employer member. It serves as the Tribunal's watchdog on fiscal matters. The work of the Finance & Administration Committee during 1988 was largely directed towards overseeing the control of the 1988/89 budget, converting the Tribunal's fiscal period to a calendar-year fiscal period effective January 1, 1989, and developing the 1989 budget.

Details of the 1988/89 Budget, adjusted to nine months, are provided in *Appendix F*.

2. 1989 Budget Preparation

The preparation of the 1989 budget involved an extended budget review exercise, whereby department budget submissions were extensively studied by the Finance and Administration Committee on a detailed line-by-line basis. The resulting draft budget was then subjected to a solid week of close review by a super-committee consisting of the Tribunal Chairman, Alternate Chair, General Manager, Department Heads, members of the Finance and Administration and Executive Committees, and the chairs of all standing committees. In September 1988, the final budget was submitted to the Minister of Labour for approval.

Despite a determined effort to hold the increase to four per cent, an increase of 4.6 per cent proved necessary: Total operating expenditures of \$8.76 million compared to \$8.38 million for the 88/89 budget. The Minister approved the budget as submitted.

3. Audits

The Tribunal has been advised that the Ministry of Labour's internal audit staff is preparing a management audit of the Appeals Tribunal in 1989.

During 1988, pursuant to arrangements with the Provincial Auditor's Office under the terms of the Memorandum of Understanding, the firm of Touche Ross conducted an audit of the 1987/88 expenditures. The same firm will audit the nine-month calendar year ending December 31, 1988. These audit reports are not available at the time of publishing and will be presented in future reports.

4. Financial Statements for April 1, 1987, to March 30, 1988, and for April 1, 1988, to December 31, 1988

These financial statements appear as *Appendix F*.

WORKERS' COMPENSATION APPEALS TRIBUNAL
THIRD REPORT

APPENDIX A

STATEMENT OF MISSION, GOALS AND COMMITMENTS

STATEMENT OF MISSION, GOALS AND COMMITMENTS

THE MISSION

In its most fundamental terms, the Tribunal's mission is to perform appropriately the duties assigned to it by the *Workers' Compensation Act*.

These duties are both explicit and implicit. The explicit assignments define what the Tribunal must do and are, generally speaking, clear. They need not be repeated here.

The implicit obligations identify the manner of the Tribunal's operations. By definition, the nature of those obligations is subject to interpretation and debate, and it is important that the Tribunal's perceptions in that respect be known.

The implicit statutory obligations as the Tribunal understands them may be usefully described in the following terms.

1. The Tribunal must be competent, unbiased and fair-minded.
2. The Tribunal must be independent.

The obligation to be independent has three essential facets:

- (a) The maintenance of an arms-length, independent relationship with the Workers' Compensation Board.
 - (b) A commitment by the chairman, vice-chairs and members to not being inappropriately influenced by the popular views of workers or employers.
 - (c) A commitment by the chairman, vice-chairs and members to being undeterred by the possibility of government disapproval.
3. The Tribunal must utilize an appropriate adjudication process. To be appropriate, the Tribunal believes the process must generally conform with the following basic concepts:
 - (a) The process must be recognized as not being an "adversarial" process as that concept is generally understood in a common-law context.

(Unlike a court, the Tribunal is not engaged in resolving a contest between private parties. Appeals to the Tribunal represent a stage in the workers' compensation system's investigation of the statutory rights and benefits flowing from an industrial injury.

It is a stage of the system's process that is invoked on the initiative of a worker or employer but in this stage, as in earlier stages of the process, it is the system and not the worker or the

APPENDIX A

employer which has the burden of establishing what the Act does or does not provide with respect to any reported accident.

The fact that it is the system which has the primary responsibility in this respect is reflected in the Board's and the Tribunal's explicit investigative mandates and their respective statutory obligations to decide cases on the basis of their "real merits and justice".

In legal terminology the process may be characterized as an "inquisitorial" as opposed to an "adversarial" process.

Despite the non-adversarial or inquisitorial nature of the process, it is a fact that the Tribunal's hearings normally take much the same form as do hearings in a typical adversarial process. To the uninitiated, the use of what is essentially an adversarial hearing format is confusing as to the fundamental nature of the Tribunal's process. In fact, however, the adversarial format merely reflects the Tribunal's tacit recognition that the participation of the parties in that manner will meet expectations in that regard and will, as well, be usually both the most effective and the most satisfying way for parties to, in fact, contribute to the Tribunal's search for the real merits and justice.

The Tribunal's commitment, in a non-adversarial process, to an essentially adversarial hearing format is also bolstered by its appreciation of the Canadian legal system's concept of what constitutes a "hearing". The legal system's understanding of the principles of natural justice that apply where there is, as there is here, a right to a hearing, are such that even in a non-adversarial process the style of hearing would not in law be allowed to stray far from the basic adversarial format.)

- (b) The non-adversarial nature of the process in which the Tribunal is engaged evokes the following three, particularly significant special process imperatives.
 - (i) The Tribunal's hearing panels have a responsibility to take such steps as they may find necessary to satisfy themselves that in any particular case they have such reasonably available evidence as they require to be confident as to the actual merits and justice in that case.
 - (ii) The issue agenda in any case must ultimately be determined by the hearing panels and not dictated by the parties.
 - (iii) The manner of conducting a hearing, while usually to be governed by rules and format of a standard nature, must be adaptable to the special hearing needs of any particular case as the hearing panel in that case may consider necessary or appropriate. Any such adaptations must, however, be consistent with a fair hearing and reflect proper regard for the integrity of general Tribunal rules and procedures that are conducive to effective and fair process from an overall perspective.
- (c) The adjudication process must be effective and fair from the parties' perspective.

It must allow the parties timely knowledge of the issues, a fair opportunity to challenge or add to evidence and/or to provide their own evidence, and a fair opportunity to advocate their views and to argue against opposing views.

APPENDIX A

- (d) The process must also be effective from the perspective of the Tribunal.

It must provide the Tribunal's panels with the evidence, the means of evaluating the evidence, and the understanding of the issues, which will permit them to decide with confidence on the real merits and justice of the case.

- (e) The process should not be more complicated, regulated, or formal (and, thus, not more intimidating to lay participants) than the requirements of effectiveness and fairness and the needs of reasonable efficiency dictate.
- (f) In the post-hearing phase, the decision-making process must provide full opportunity for effective tripartite decision-making and for the careful development of appropriate decisions.

To be appropriate, decisions must be written and fully-reasoned. They must conform to the rule of law and meet reasonable, general standards of decision quality. Applicable law must be given its due effect and the principles adopted in other Appeals Tribunal decisions must be shown appropriate deference. The goal of achieving like results in like fact situations must be sensibly pursued.

4. The process for dealing with applications, as distinguished from appeals, while conforming generally with the foregoing, must be subject to such variations as the special statutory provisions governing each of the various applications may anticipate.

5. The Tribunal must hold hearings and reach decisions in as timely a fashion as is reasonably possible given the foregoing process obligations.

6. The Tribunal must make all its decisions readily accessible to the public.

7. The Tribunal's services must be reasonably accessible in both the French and English languages.

GOALS

In pursuing its mission, the Tribunal has adopted the following specific goals.

1. Achieving a total case turnaround time from notice of appeal or application to final disposition that averages four months, and in individual cases, unless they are of unusual complexity or difficulty, does not exceed six months.

2. Providing a system which can, so far as is reasonably possible, meet the various implicit statutory imperatives regardless of the experience or capabilities in a particular case of the worker's or employer's representative, or the absence from the process of any party or representative.

3. Maintaining at all points of contact between the Tribunal and workers and employers and their representatives a welcoming, empathetic, non-intimidating and constructive professional environment -- an environment grounded in implicit respect on the part of all Tribunal staff and members for the goals and motives of workers and employers involved in the Tribunal's processes and for the importance of the Tribunal's work on their behalf.

APPENDIX A

4. Maintaining a working environment for Tribunal staff that provides both challenging work and suitable opportunities for personal recognition, development and advancement, in an atmosphere of mutual respect.
5. Maintaining at all times a sufficient complement of qualified, competent, trained and committed vice-chairs and members.
6. Maintaining at all times a sufficient roster of qualified and committed medical assessors.
7. Maintaining at all times a sufficient complement of qualified, competent, trained and committed administrative and professional staff.
8. Providing the physical facilities, equipment and administrative support services necessary for the vice-chairs, members and staff to perform their responsibilities efficiently and in a manner which is conducive to job satisfaction and consistent with professional expectations.
9. Within such restrictions as may be implicit in the chairman's statutory obligation to take as his or her guidelines in the establishment of job classifications, salaries and benefits the administrative policies of the Government, compensating staff fairly and competitively relative to their responsibilities and the nature of their work.
10. Maintaining a constructive and appropriate working relationship with the medical profession and its members, generally, and with the Tribunal's medical assessors, in particular.
11. Maintaining a constructive and appropriate working relationship with the Board and its staff and with the Board's board of directors.
12. Maintaining a constructive and appropriate working relationship with the Minister and Ministry of Labour and with such other components of the government structure with which the Tribunal has dealings from time to time.
13. Providing the public and, in particular, workers and employers and their respective communities and representatives with such information about the Appeals Tribunal and its operations as is necessary for the effective utilization of the Tribunal's services.

COMMITMENTS

In the performance of the Tribunal's Mission and in the pursuit of its Goals, the Tribunal has recognized a number of matters to which it is effectively committed.

1. The Tribunal is committed to keeping the investigative and pre-hearing preparation activities of the Tribunal separate from its decision-making activities.

This is accomplished by means of a permanent department of full-time professional staff referred to as the Tribunal Counsel Office (the TCO). TCO's assignment in this regard is to perform the Tribunal's investigative and pre-hearing preparation work. This work is to be performed in accordance with general standing instructions of the Tribunal. In individual cases where pre-hearing investigation or preparation requirements appear to exceed such standing instructions, TCO will act in accordance with special instructions from Tribunal panels -- panels whose members are not thereafter permitted to participate in the hearing and deciding of such cases.

APPENDIX A

2. The Tribunal is committed to Tribunal-monitoring, at the pre-hearing stage, of the identification of issues and the sufficiency of evidence.

As part of the commitment to separation of pre-hearing investigation and preparation activity from decision-making activity, this monitoring is normally carried out by the TCO pursuant to Tribunal instructions delivered in the manner described above.

(This commitment does not preclude variable strategies concerning the degree of pre-hearing monitoring and the amount of TCO initiative in the pre-hearing preparation, with respect to different categories of cases. It also contemplates the possibility of TCO not monitoring particular categories of uncomplicated cases.)

It is, of course, understood that the TCO's pre-hearing role does not diminish in any way the hearing panels' intrinsic rights and obligations in the hearing and determining of individual cases. Hearing panels have the final say in the identification of issues and, at a mid-hearing or post-hearing phase, the right to initiate and supervise the development or search for additional evidence, or to obtain further legal research or request additional submissions.

3. The Tribunal is committed to having the Tribunal represented by its own counsel at any Tribunal hearing where the Tribunal considers such representation necessary or useful.

4. In its internal decision-making processes, the Tribunal is committed to the maintenance of a tri-partite working environment characterized by mutual respect and by free and frank discussions based on non-partisan, personal best judgements from all panel members.

5. The Tribunal is committed to maintaining internal educational processes suitable for developing a Tribunal-wide, comprehensive appreciation of the nature and dimensions of emerging, generic, medical, legal or procedural issues.

6. The Tribunal is committed to the establishment and maintenance of a general workers' compensation information resource and library.

This resource and library is to be a sufficient and effective source of legal, medical, and factual information relevant to the workers' compensation subject. It shall provide access to information which is not conveniently assembled elsewhere, and which workers and employers, members of the public, professional representatives, and Members and staff of the Tribunal require if they are to truly understand the workers' compensation system and the issues which it presents, or be able to prepare on a fully informed basis for presenting or dealing with such issues in individual cases.

This information is to be readily accessible through electronic and other means.

7. The Tribunal is committed to the creation of a permanent, widely distributed and easily accessible, published record of the Tribunal's work.

This record is to consist of the selection of Tribunal decisions best calculated to assist worker or employer representatives to understand, in the preparation of their cases, workers' compensation issues and the Tribunal's developing position on such issues.

APPENDIX A

8. The Tribunal is committed to the review by the Chairman, or by the Office of the Counsel to the Chairman, of draft panel decisions.

This review is conducted for the purpose of ensuring – to the extent possible given the overriding hearing-panel autonomy – that the Tribunal’s body of decisions complies reasonably with the general hallmarks of quality which the Tribunal has recognized.

9. The Tribunal is committed to devoting its best efforts to having Tribunal decisions comply reasonably with the following hallmarks of a good-quality adjudicative decision:

- (a) It does not ignore or overlook relevant issues fairly raised by the facts.
- (b) It makes the evidence base for the panel’s decisions clear.
- (c) On issues of law or on generic medical issues, it does not conflict with previous Tribunal decisions unless the conflict is explicitly identified and the reasons for the disagreement with the previous decision or decisions are specified.
- (d) It makes the panel’s reasoning clear and understandable.
- (e) It meets reasonable standards of readability.
- (f) It conforms reasonably with Tribunal standard decision formats.
- (g) From decision to decision the technical and legal terminology is consistent.
- (h) It contributes appropriately to a body of decisions which must be, as far as possible, internally coherent.
- (i) It does not support permanent conflicting positions on clear issues of law or medicine. Such conflicts may occur during periods of development on contentious issues. They cannot be a permanent feature of the Tribunal’s body of decisions over the long term.
- (j) It conforms with applicable statutory and common law and appropriately reflects the Tribunal’s commitment to the rule of law.
- (k) It forms a useful part of a body of decisions which must be a reasonably accessible and helpful resource for understanding and preparing to deal with the issues in new cases and for invoking effectively the important principle that like cases should receive like treatment.

10. The Tribunal is committed to obtaining in each case such reasonably available evidence as its hearing panels require if they are to be confident as to the appropriateness of their decision on any factual or medical issue.

11. The Tribunal is committed to holding hearings at appropriate out-of-Toronto locations.

The commitment in this respect is that cases originating out of Toronto should be heard at locations which are reasonably convenient from both the worker’s and employer’s perspective. This commitment is subject to the limit of not imposing travel obligations on Tribunal members or administrative burdens on the Tribunal so onerous as to interfere with the effective operation of the Tribunal in other respects.

APPENDIX A

12. The Tribunal is committed to the payment of expenses and compensation in respect of lost wages arising from attendance at Tribunal hearings in accordance with the WCB's policies in that regard with respect to attendance at WCB proceedings.

13. The Tribunal is committed to paying for medical reports which serve a reasonable purpose in the Tribunal's proceedings.

14. The Tribunal is committed to being fiscally responsible in the management of its expenditures to the end that only moneys necessary for the performance of the Tribunal's mission and the accomplishment of the Tribunal's goals are, in fact, spent.

This document reflects the Tribunal's Mission, Goals and Commitments as at least implicitly understood from the Tribunal's inception.¹ Their expression in these particular terms was approved by the Tribunal as of October 1, 1988.

¹ The single exception is Goal No. 1. The original turnaround goal was six months.

WORKERS' COMPENSATION APPEALS TRIBUNAL
THIRD REPORT

APPENDIX B
TRIBUNAL MEMBERS ACTIVE DURING
THE REPORTING PERIOD

THE MEMBERS OF THE TRIBUNAL

Chairman

S. Ronald Ellis

Mr. Ellis is the Tribunal's first chairman. He assumed office on October 1, 1985. He was re-appointed for a three-year term effective October 1, 1988. Mr. Ellis, who trained and practised as an engineer before going to law school, was formerly a partner in the Toronto law firm of Osler, Hoskin & Harcourt. More recently, he was a faculty member at Osgoode Hall Law School where he was Director and then Faculty Director of Parkdale Community Legal Services. He came to the Tribunal from his position as Director of Education and Head of the Bar Admission Course for the Law Society of Upper Canada. In addition, Mr. Ellis has significant experience as a labour arbitrator.

Alternate Chairman

Laura Bradbury

Ms. Bradbury was appointed to the Tribunal effective October 1, 1985, and was re-appointed for a one-year term effective October 1, 1988. Her re-appointment for only one year reflects the Tribunal's "stagger policy". She is expected to be re-appointed for a further three-year period effective October 1, 1989. Called to the Bar in 1979, she acted as counsel for injured workers and, for the two years prior to her appointment, was an investigator with the Office of the Ombudsman. The position of alternate chairman is not one that is defined by the Tribunal's legislation. It is a management position created by the chairman as a means of sharing the administrative and management load that devolves on the Chairman's Office. The title was chosen to reflect the senior nature of the position and the fact that the incumbent is also the vice-chairman appointed by the chairman -- pursuant to provisions in the legislation in that respect -- to act in place of the chairman in the event of the chairman's absence from the Province or his inability to act. The alternate chairman, like the chairman, has both a management and an adjudicative role.

APPENDIX B

Full-Time Vice-Chairmen

Jean Guy Bigras

Mr. Bigras who was first appointed to the Tribunal as a part-time vice-chair on May 14, 1986, was granted a full-time appointment effective December 17, 1987. He is a former journalist and civil servant. During his 20 years as a journalist for North Bay and Ottawa dailies, he had extensive experience in labour and judicial affairs. As an Ontario Government public servant, he had the experience of co-ordinating a Ministry of Health task force.

Nicolette Carlan (Catton)

Ms. Carlan was appointed to the Tribunal effective October 1, 1985 and was reappointed for a further two year term effective October 1, 1988. A graduate in sociology, she was with the Office of the Ombudsman for nine years prior to her appointment. From 1978 to 1985, she was in charge of the Ombudsman's Workers' Compensation Directorate.

Maureen Kenny

Ms. Kenny was appointed to the Tribunal effective July 30, 1987. She was called to the Bar of Ontario in 1979. Following a period of private practice, Ms. Kenny joined the (Ontario) Ministry of Labour as a policy analyst. She came to the Tribunal originally in October 1985, in the position of Counsel to the Chairman.

Faye W. McIntosh-Janis

Ms. McIntosh-Janis was appointed to the Tribunal effective May 14, 1986. She was called to the Bar of Ontario in 1978, and was a full-time member of the Research Department at Osler, Hoskin & Harcourt for six years. She came to the Tribunal from the position of Senior Solicitor with the Ontario Labour Relations Board.

John Paul Moore

Mr. Moore was appointed to the Tribunal as a part-time vice-chairman on July 16, 1986, and was appointed as a full-time vice-chairman effective May 1, 1988, for a three-year term. Called to the Bar in 1978, Mr. Moore was previously a staff lawyer with the Kinna-Aweya legal clinic in Thunder Bay, and a staff lawyer with Downtown Legal Services on a part-time basis, dealing with various administrative tribunals.

Zeynep Onen

Ms Onen was appointed to the Tribunal effective October 1, 1988, for a three-year term. Called to the Bar of Ontario in 1982, Ms. Onen was with the Office of the Ombudsman for three years. Ms. Onen joined the Tribunal in October 1985, and was Senior Counsel in the Tribunal Counsel Office from 1986-1988.

Antonio Signoroni

Mr. Signoroni was appointed to the Tribunal effective October 1, 1985, and was re-appointed for another three-year term effective October 1, 1988. A practising lawyer since 1982, Mr. Signoroni had ten years experience as a part-time chairman to the Board of Referees of the Unemployment Insurance Commission. Before entering the legal profession he was involved extensively with service to the Italian community. He was a trustee on the Metro Separate School Board from 1980 to 1982.

David Starkman

Mr. Starkman was appointed to the Tribunal effective August 1, 1988, for a three-year term. He was called to the Bar of Ontario in 1980, and practised law at Golden, Green & Starkman. Mr. Starkman joined the Tribunal in 1985 as the first Tribunal General Counsel.

I. J. Strachan

Mr. Strachan was appointed to the Tribunal effective October 1, 1985, and was re-appointed for further two and a half-year term effective October 1, 1988. Called to the Bar in 1971, Mr. Strachan's law practice involved advising small businesses with respect to a variety of commercial matters and employee-related issues. He has also served as a director of the Canadian Organization of Small Business.

Members Representative of Employers and Workers: Full-Time

Robert Apsey

Mr. Apsey was appointed to the Tribunal as a member representative of employers effective December 11, 1985, and was re-appointed for another three-year term effective December 11, 1988. He held a number of responsible positions at Reed Stenhouse during his 25 years with that firm until his early retirement in 1983, as a vice-chairman of the Board and Senior Vice-President.

Brian Cook

Mr. Cook was appointed to the Tribunal as a member representative of workers effective October 1, 1985, and was re-appointed for a further one-year term on October 1, 1988. His re-appointment for only one year reflects the Tribunal's "stagger policy". He is expected to be re-appointed for a further three-year period effective October 1, 1989. A graduate of the University of Toronto, Mr. Cook was a community legal worker with the Industrial Accident Victims Group of Ontario for five years.

Sam Fox

Mr. Fox was appointed to the Tribunal as a member representative of workers effective October 1, 1985, and was re-appointed for a further two-year term effective October 1, 1988.

APPENDIX B

A past president of the Labour Council of Metropolitan Toronto, Mr. Fox is a former Co-Director and International Vice-President of Amalgamated Clothing and Textile Workers Union.

Karen Guillemette

Ms. Guillemette was appointed to the Tribunal as a member representative of employers effective July 2, 1986. Ms. Guillemette was the Administrator of Occupational Health at Kidd Creek Mines Limited in Timmins, and had been an active member of the Ontario Mining Association. Prior to her position as Administrator, she was the Industrial Nurse at Kidd Creek Mines.

Lorne Heard

Mr. Heard was appointed to the Tribunal as a member representative of workers effective October 1, 1985, and was re-appointed for a further three-year term effective October 1, 1988. With more than 30 years of experience in workers' compensation matters, Mr. Heard came to the Tribunal from a 13-year career with the United Steelworkers of America where he had national responsibility for occupational health and safety, and workers' compensation.

W. Douglas Jago

Mr. Jago was appointed to the Tribunal as a member representative of employers effective October 1, 1985, and was re-appointed for a further two-year term effective October 1, 1988. Mr. Jago had been Managing Director of Brantford Mechanical Ltd., and President and principal owner of W.D. Jago Ltd., both mechanical contracting concerns. He was an active member of the Mechanical Contractor's Association.

Raymond Lebert

Mr. Lebert was appointed to the Tribunal as a member representative of workers effective June 1, 1988. Prior to joining the Tribunal Mr. Lebert was the Financial Secretary-Treasurer of Local 444 of the Canadian Auto Workers.

Nick McCombie

Mr. McCombie was appointed to the Tribunal as a member representative of workers effective October 1, 1985, and was re-appointed for a further three-year term effective October 1, 1988. His move to the Tribunal followed seven years' service as a legal worker at the Injured Workers' Consultants legal clinic in Toronto.

Martin Meslin

Mr. Meslin was appointed to the Tribunal as a part-time member representative of employers effective December 11, 1985, and appointed to a three-year, full-time term effective August 1, 1988. He has over 30 years of experience in running his own business in the printing industry. He was a lay member of the Ontario Legal Aid Plan Appeals Committee, and a lay appointee to the governing Council of the College of Physicians and Surgeons of Ontario and a member of the Discipline Tribunal of the College.

Kenneth W. Preston

Mr. Preston was appointed to the Tribunal as a member representative of employers effective October 1, 1985, and was re-appointed for a further two year term effective October 1, 1988. A graduate chemical engineer, Mr. Preston was Director of Employee Relations for Union Carbide for ten years and Vice-President of Human Resources for Kellogg Salada for three years.

Maurice Robillard

Mr. Robillard was appointed to the Tribunal as a member representative of workers effective March 11, 1987. Prior to his appointment, he was an international representative of the Amalgamated Clothing and Textile Workers' Union of America for 20 years with a wide range of experience including mediation of internal union problems, negotiating contracts, appearances before various provincial labour relations boards and advising workers of their rights under provincial labour laws.

Jacques Séguin

Mr. Séguin was appointed to the Tribunal as a member representative of employers effective July 1, 1986. Mr. Séguin was chairman of the Softwood Plywood Division of the Canadian Hardwood Plywood Association C.L.A. and Vice-President of CHPA from 1981 to 1983. He retired from Levesque Plywood Limited as General Manager in 1984.

APPENDIX B

PART-TIME MEMBERS OF THE TRIBUNAL

Part-Time Vice-Chairmen

Arjun Aggarwal

Dr. Aggarwal was appointed to the Tribunal effective May 14, 1986. He is currently the coordinator of labour management studies at Confederation College in Thunder Bay, Ontario. He has past experience as a labour lawyer, labour consultant, conciliator, fact-finder, referee, and is an approved arbitrator.

Sandra Chapnik

Appointed to the Tribunal effective March 11, 1987, Ms. Chapnik practices with the law firm of Leonard A. Banks and Associates. She has also served as a part-time Rent Review Commissioner and a Fact Finder for the Education Relations Commission.

Gary Farb

Mr. Farb was appointed to the Tribunal effective March 11, 1987. He is in private practice and was called to the Bar in 1978. He has a wide range of experience in administrative law, including two years as legal counsel in the Office of the Ombudsman.

Marsha Faubert

Ms. Faubert was appointed to the Tribunal effective December 10, 1987. She was called to the Bar of Ontario in 1981, and joined the Tribunal as a lawyer in the Tribunal Counsel Office in October 1985, following four years in private practice.

Karl Friedmann

Dr. Friedmann was appointed to the Tribunal effective December 17, 1987. He has a Ph.D. in political science and taught at the University of Calgary for 13 years. From 1979 to 1985, he was British Columbia's first Ombudsman.

Ruth Hartman

Ms. Hartman was appointed to the Tribunal effective December 11, 1985, and was re-appointed for a further three-year term effective December 11, 1988. She is currently in private practice with an emphasis on administrative appeals to provincial tribunals. She was previously counsel to the Ombudsman for five years.

Joan Lax

Ms Lax was appointed to the Tribunal effective May 14, 1986. Called to the Bar in 1978, she has practised with the law firm of Weir & Foulds, with emphasis on administrative and civil law. She is currently the Assistant Dean, Faculty of Law, University of Toronto.

Victor Marafioti

Mr. Marafioti, appointed to the Tribunal effective March 11, 1987, is currently the Director of Business Programs at Centennial College of Applied Arts and Technology. For approximately ten years, he was the Director of COSTI, a rehabilitation centre with extensive involvement with the Workers' Compensation Board.

William Marcotte

Mr. Marcotte was appointed to the Tribunal effective May 14, 1986. He is a mediator and is on the list of approved arbitrators with the Ministry of Labour. He teaches collective bargaining processes at the University of Western Ontario.

Eva Marszewski

Ms Marszewski was appointed to the Tribunal effective May 14, 1986. She was called to the Bar in 1976 and is, at present, in private practice with special emphasis on civil litigation, family law, municipal law and labour law. She is a past member of the Ontario Advisory Council on Women's Issues.

Joy McGrath

Ms McGrath was appointed to the Tribunal effective December 10, 1987. She was called to the Bar of Ontario in 1977, and is currently in private practice. Prior to attending law school, Ms McGrath had six years' experience as President and General Manager of a company specializing in commercial and residential development.

Denise Réaume

Appointed to the Tribunal effective March 11, 1987, Professor Réaume is a professor of law at the University of Toronto. She teaches administrative law and her past experience includes a research study entitled, "Compensation for Loss of Working Capacity" for the Ontario Law Reform Commission.

Sophia Sperdakos

Ms Sperdakos was appointed to the Tribunal effective May 14, 1986. She was called to the Ontario Bar in 1982 and is currently with the law firm of Dunbar, Sachs, Appell. She was a chairperson and caseworker with the Community and Legal Aid Services programme at Osgoode Hall Law School.

Susan Stewart

Ms Stewart was appointed to the Tribunal effective May 14, 1986. Ms Stewart articulated with the Ontario Labour Relations Board and was called to the Bar of Ontario in 1981. She is currently on the Ministry of Labour's list of approved arbitrators.

APPENDIX B

Gerald Swartz

Mr. Swartz, appointed to the Tribunal effective March 11, 1987, was, at one time, Director of Research for the Ministry of Labour. He is now the President of Canadian Loric Consultants Ltd. He has experience in human resources management, negotiating collective agreements, arbitrations, and workers' compensation and employment standards assessments.

Paul Torrie

Mr. Torrie was appointed to the Tribunal effective May 14, 1986. He is currently a partner in the law firm of Torrie, Simpson, practising in a wide range of litigation, administrative and corporate law. Mr. Torrie's additional work experience includes community legal work with the Osgoode Hall Community Legal Aid Services programme.

Peter Warrian

Mr. Warrian was appointed to the Tribunal effective May 14, 1986, and has extensive labour relations experience through his involvement with the Ontario Public Service Employees Union. He currently carries on a consulting business with government and union clientele and has written extensively in the labour relations field.

Chris Wydrzynski

Professor Wydrzynski was appointed to the Tribunal effective March 11, 1987. He is a Professor of law at the University of Windsor (since 1975) and was called to the Bar in 1982. He teaches administrative law and has acted as a referee, analyst, consultant, research evaluator and panelist.

Members Representative of Employers and Workers: Part-Time

Shelley Acheson

Ms Acheson was appointed to the Tribunal as a member representative of workers effective December 11, 1985, and was re-appointed for a further three-year term effective December 11, 1988. She was the Human Rights Director of the Ontario Federation of Labour from 1975 to 1984.

Dave Beattie

Mr. Beattie was appointed to the Tribunal as a member representative of workers effective December 11, 1985, and was re-appointed for a further three-year term effective December 11, 1988. He has 20 years of WCB experience representing injured workers or disabled firefighters in Appeals Adjudicator and Appeal Board hearings.

APPENDIX B

Frank Byrnes

Mr. Byrnes was appointed to the Tribunal as a member representative of workers effective May 14, 1986. He was formerly a police officer and has been a member of the Joint Consultative Committee on Workers' Compensation Board matters.

Herbert Clappison

Mr. Clappison was appointed to the Tribunal as a member representative of employers effective May 14, 1986. Mr. Clappison retired from Bell Canada in 1982 after 37 years of employment with that company. Upon retirement, he was Director of Labour Relations and Employment.

George Drennan

Mr. Drennan was appointed to the Tribunal as a member representative of workers effective December 11, 1985. He was re-appointed for a three-year term effective December 11, 1988. He has been the Grand Lodge Representative for the International Association of Machinists and Aerospace Workers since 1971.

Douglas Felice

Mr. Felice was appointed to the Tribunal as a member representative of workers effective May 14, 1986, and is currently with the Canadian Paper Workers Union.

Mary Ferrari

Ms Ferrari was appointed to the Tribunal as a member representative of workers effective May 14, 1986. Her previous experience includes legal worker with the Industrial Accident Victims Group of Ontario.

Patti Fuhrman

Ms Fuhrman was appointed to the Tribunal as a member representative of workers effective May 14, 1986. She was a caseworker at the Advocacy Resource Centre for the Handicapped and, more recently, was a worker with Employment and Immigration Canada.

Mark Gabinet

Mr. Gabinet was appointed to the Tribunal as a member representative of employers effective December 17, 1987. He is currently the Health and Safety Administrator for the City of Brampton, a position he has held since 1984. Prior to that time he worked as a research consultant with the Industrial Accident Prevention Association.

Roy Higson

Mr. Higson was appointed to the Tribunal as a member representative of workers effective December 11, 1985, and was re-appointed for a further three-year term effective December 11,

APPENDIX B

1988. He recently retired from the Retail, Wholesale and Department Store Union. He was the international representative of Local 414 for nine years and has 29 years of union experience.

Faith Jackson

Ms Jackson was appointed to the Tribunal as a member representative of workers effective December 11, 1985. She was re-appointed for a further three-year term effective December 11, 1988. A Nurses' Aid at Guildwood Villa Nursing Home from 1972 to 1985, Ms Jackson was a member of the Executive Board of the Service Employees International Union (SEIU) for six years.

Donna Jewell

A resident of London, Ms Jewell was appointed to the Tribunal as a member representative of employers effective December 11, 1985. She was re-appointed for a further three-year term effective December 11, 1988. She has been the assistant safety director of Ellis-Don Ltd. for approximately seven years. She managed the Ellis-Don WCB claims management and safety programs.

Peter Klym

Mr. Klym was appointed to the Tribunal as a member representative of workers effective May 14, 1986. He is currently employed with the Communication Workers of Canada.

Teresa Kowalishin

Ms Kowalishin was appointed to the Tribunal as a member representative of employers effective May 14, 1986. She has been employed as a lawyer with the City of Toronto since her call to the Bar in 1979.

Frances L. Lankin

Ms Lankin was originally appointed to the Tribunal as a full-time member representative of workers effective December 11, 1985. For five years prior to her appointment, she was the Research/Education Officer for the Ontario Public Service Employees Union. She was also that union's equal opportunities coordinator. On February 25, 1988, Ms Lankin's full-time appointment was modified to a part-time status so that she could accept employment with OPSEU.

Allen S. Merritt

Mr. Merritt was appointed to the Tribunal as a member representative of employers effective June 23, 1988. He is currently a labour relations consultant with his own consulting firm. Mr. Merritt retired from a career in education in 1985. At that time he was Superintendent of Employee Relations for the Metropolitan Toronto School Board and Chief Negotiator for all Boards of Education in Metropolitan Toronto.

Gerry M. Nipshagen

Mr. Nipshagen was appointed to the Tribunal as a member representative of Employers effective October 1, 1988. He has extensive management experience in both the manufacturing and agricultural areas. From 1980 to 1988, he was Occupational Health and Safety Manager for Leaver Mushrooms, where he was responsible for workers' compensation and health and safety matters.

Fortunato (Lucky) Rao

Mr. Rao was appointed to the Tribunal as a member representative of workers effective February 11, 1988. Mr. Rao was formerly a union representative with the United Steelworkers of America and for 14 years has hosted a cable "labour news" programme.

John Ronson

Mr. Ronson was appointed to the Tribunal as a member representative of employers effective December 11, 1985, and was re-appointed for a further three-year term on December 11, 1988. He has an extensive background in personnel development at Stelco.

Sara Sutherland

Ms Sutherland was appointed to the Tribunal effective December 17, 1987. She is currently Supervisor, Corporate External Liaison Services, in the Health and Safety Division of Ontario Hydro.

**Members Who Resigned or Whose Appointments Expired
During the Reporting Period**

Donald Grenville

Tribunal member representative of Employers (part-time)

John Magwood

Vice-Chair (part-time)

David C. Mason

Tribunal member representative of employers (full-time)

APPENDIX B

Elaine Newman

Vice-Chair (full-time)
Currently Tribunal General Counsel

Kathleen O'Neil

Vice-Chair (full-time)

James R. Thomas

Alternate Chair

WORKERS' COMPENSATION APPEALS TRIBUNAL
THIRD REPORT

APPENDIX C
DETAILS OF THE DEVELOPING RELATIONSHIP
WITH THE BOARD

Schedule 1: Practice Direction No. 9

DETAILS OF THE DEVELOPING RELATIONSHIP WITH THE BOARD

1. Chronic Pain and Retroactivity

The compensability of what Tribunal *Decision No. 915* (May 26/87) defined as "enigmatic chronic pain" and "psychogenic pain magnification", and what has come to be referred to generically as "chronic pain", continues to be a developing subject both at the WCB and the Appeals Tribunal. It has also been a particular focus of the evolving relationship between the two organizations.

Shortly after *Decision No. 915's* recognition of the compensability of chronic pain in principle, the WCB board of directors approved the WCB's own policy for compensating what it referred to as "chronic pain disorders". At the same time, the WCB board of directors accepted the WCB staff's recommendation that the board of directors not exercise its section 86n review powers with respect to *Decision No. 915*.

The decision not to review *Decision No. 915* was taken explicitly without prejudice to the board of directors' right to review the decision at a later stage, but the impression that was left, certainly with the Appeals Tribunal, was that the board did not consider the *915* decision to be in substantial conflict with the chronic-pain disorder policy which it had just approved. Much later, it eventually became clear that, at least as far as the WCB's staff was concerned, this was only partly right.

The policy, as it came to be applied by the WCB's staff, in effect compensates disabilities attributable to enigmatic chronic pain. It does not, however, in fact allow for compensation of chronic pain in the nature of psychogenic magnification of pain associated with a residual organic problem. It compensates only chronic-pain cases which are predominantly non-organic in nature (which is how it categorizes enigmatic, chronic-pain cases) and considers pain magnification cases to be predominantly organic. Cases in the latter category continue to be compensated under the old policy. That policy provides that, in determining the compensable degree of a permanent disability any psychogenic, pain-magnification element is to be isolated and ignored.

Thus in due course it became clear that the WCB policy, at least as it was applied, was in a major respect in conflict with *Decision No. 915*. In its essential respects *Decision No. 915* is a case of pain magnification and in that decision the Appeals Tribunal had concluded that the psychogenic, pain-magnification element of the worker's disability as well as the organic element was compensable. The board of directors' decision to not review *Decision No. 915* obscured this essential conflict for a period of time. The Tribunal's subsequent treatment of permanent pension chronic-pain appeals, which is described below, was, during a critical period, influenced to some extent by this misunderstanding of the WCB's position.

Once the WCB's own chronic-pain policy was in place, a discussion then took place between the WCB's staff and the Appeals Tribunal concerning the appropriate treatment of the chronic pain cases which at the time the WCB's policy was approved were already on appeal to the Tribunal but not heard or decided. This discussion and its effect on the processing of the large number of cases which had been put on hold by the Tribunal pending the release of *Decision No. 915* is alluded to in the Second Report. At page 5 of that report it is mentioned that as of the end of that report's reporting period the processing of the appeals in these cases was undergoing a further short delay while the Tribunal and the WCB "worked out their appropriate respective roles in these cases in the light of the WCB's subsequent adoption of its own new policy on chronic pain."

The problem was as follows. The WCB's staff felt that the WCB should now review in the light of its new chronic-pain disorder policy all of the cases of a chronic-pain nature which had been

APPENDIX C

appealed to the Tribunal but not heard or decided at the time the WCB's policy issued. It was of the view that the WCB's introduction of this new policy had removed the Tribunal's jurisdiction to deal with these cases until after the WCB had considered how its new policy applied.

Under the Act, the Tribunal's jurisdiction arises only with respect to final decisions in which the WCB's procedures have been exhausted (Section 86g(2)). The WCB's staff argued that the WCB's adoption of a policy for compensating certain cases of a chronic-pain nature meant that cases of that kind now presented issues in respect of which the WCB's procedures could not any longer be said to have been exhausted -- even though they had been appealed before the new policy issued. The WCB's staff advised the Tribunal that even if the Tribunal went ahead with the appeals in those cases and issued decisions, the WCB would feel obliged to continue with its own review of such cases and issue its own decisions.

The policy consideration which appeared to be motivating this view was the need the WCB felt to be the one which first applied its new policy to actual cases. (The WCB did not, of course, dispute the Tribunal's right to consider these cases ultimately when and if the WCB's decision in applying its new policy was appealed.)

The discussions concerning this issue were carried on between the Tribunal's General Counsel and the WCB's General Counsel.

The WCB staff's position in this respect lead the Appeals Tribunal to undertake a particularly careful review of its jurisdiction and of the appropriate relationship between it and the WCB. After intensive internal discussions, the Tribunal ultimately concluded that while it did not concede any lack of jurisdiction with respect to these cases, it did have the power to refer such cases back to the WCB for initial application of the new chronic pain policy and that in all the circumstances it would generally be appropriate to do so.

In order that this decision not lead in the worker or employer communities to any misunderstanding of the Tribunal's view with respect to its role and its relations to the WCB, the Tribunal issued a Practice Direction in which it set out full reasons for its decision to refer these cases back to the WCB. *Practice Direction No. 9* was issued October 23, 1987. It is of particular general interest for the strong light it throws on the Tribunal's view of its role in the compensation system and its appropriate relationship with the WCB. A copy may be found attached as *Schedule 1* to this Appendix.

In the controversy that was resolved by *Practice Direction No. 9*, the focus had been entirely on the permanent pension cases involving chronic-pain conditions. *Decision No. 915* had been a permanent pension case. The cases which were on hold pending the release of *Decision No. 915* had all been permanent pension cases, and it was not at that time clear to the Tribunal that the WCB's chronic-pain policy encompassed temporary benefits as well as permanent pensions. *Practice Direction No. 9* dealt only with pending permanent pension appeals.

However, after *Practice Direction No. 9* issued it soon became apparent that the WCB's staff felt that the WCB's new policy encompassed temporary as well as permanent benefits and that, in particular, the limit on the retroactivity of chronic-pain benefits should apply to temporary benefits as it did to permanent benefits. The WCB's new policy had provided that no benefits with respect to chronic-pain disabilities should be payable for any period prior to July 3, 1987 -- the date on which the new policy was approved by the board of directors. In deciding to refer the permanent-pension, chronic-pain appeal cases back to the WCB, one of the factors influencing the Tribunal had been the fact that up to that time the only decision the Tribunal had issued in a permanent-pension appeal had been *Decision No. 915*. And, as previously mentioned,

at that time it was the Tribunal's understanding that *Decision No. 915* was a decision which the board of directors regarded as, generally speaking, consistent with the WCB's new policy.

In respect of temporary, chronic-pain conditions, however, the situation was quite different. In a whole series of cases dating nearly from the creation of the Tribunal (of which *Decision No.'s 9, 11 and 50* are only the decisions to which reference is most often made), the Tribunal had regularly awarded temporary compensation benefits for disabilities of a chronic-pain nature and had done so with no limit on the retroactive payment of such benefits.

With respect to temporary chronic pain benefits, the issue of the role of the WCB's new policy in the Tribunal's proceedings did not focus on the question of whether or not such cases should be referred back to the WCB for an initial determination. At this distance, it is not clear why that would not have been an issue. From the WCB's perspective the same interest in having the first opportunity to apply the new policy would seem to apply to these cases as to the permanent-pension cases. But in fact, at the Tribunal, the issue in these cases came to be focused instead simply on whether or not the Tribunal should now apply to the decisions it was making in this type of case the limit on the retroactivity of such benefits specified in the WCB's new policy.

The Tribunal's response to this question was first articulated in *Decision No. 519*. The Hearing Panel in that case decided that it was not open to the WCB to change an established Tribunal position on an issue of general law merely by the board of directors adopting a new policy that was inconsistent with that position. In the Tribunal's view, the statute provides the WCB with only one avenue for directly affecting Tribunal decisions and that avenue is the review procedure under section 86n. The Tribunal, therefore, decided--initially in *Decision No. 519*, and subsequently in all following cases involving temporary, chronic pain benefits -- that it would continue to apply the position it had previously established with respect to the payment of temporary, chronic-pain benefits, and order them paid on a fully retroactive basis, unless and until the board of directors invoked its powers under section 86n and reviewed the Tribunal's position with respect to that issue.

The board of directors decided to exercise its 86n review powers with respect to *Decision No. 519* and it has subsequently added to that review process all of the Tribunal decisions of the same nature in which the *Decision No. 519* approach was followed. This was the second occasion for the 86n powers to be invoked, the first being with respect to Tribunal *Decision No. 72*.

At the time *Decision No. 519* was issued, the Tribunal's hearing panel in *Decision No. 915* was still in the throes of itself considering what if any restrictions on the retroactivity of the chronic-pain benefits identified in *Decision No. 915* should be imposed. This was an issue which *Decision No. 915* had reserved for further submissions and consideration. In view of the fact that it was anticipated that the Tribunal's decision on the retroactivity issue in *Decision No. 915* would be forthcoming shortly, the board of directors postponed the 86n proceedings on *Decision No. 519*, and associated cases, pending the release of that decision.

The retroactivity issue in *Decision 915* was decided in *Decision No. 915A* released on May 5, 1988. That decision concluded that as far as permanent, chronic-pain pension benefits were concerned, the Workers' Compensation Act, interpreted in accordance with the common law of retroactivity, required the application of reasonable limits on the retroactive effect of overrulings of previous institutional positions on generic legal or medical issues. It found, however, that the application of the common-law principles of retroactivity required a limitation on the retroactive application of the overruling with regard to chronic-pain permanent pension benefits which would allow those benefits to be paid in respect of any period after but not before March 27, 1986. This was the date on which the procedures which had lead ultimately to the Tribunal's chronic-pain

APPENDIX C

overruling had commenced. This date was some 16 months prior to July 3, 1987, which was the date of limitation adopted by the WCB board of directors with respect to chronic-pain benefits. In the course of dealing with the retroactivity issue, the Hearing Panel in *Decision No. 915A* had occasion to make clear the Tribunal's understanding that the WCB's chronic-pain disorder policy was designed to compensate both of the elements of chronic pain defined in *Decision No. 915* -- i.e., both enigmatic chronic pain and psychogenic pain magnification. It was then made clear by the WCB's staff, what we have discussed above, that that impression was wrong; that, as far as the WCB's staff is concerned, the policy does not extend to cases of pain magnification.

By the end of the reporting period, the Appeals Tribunal had not yet issued a decision in an appeal of any case in which the WCB had applied its chronic pain disorder policy. The Tribunal has, therefore, had no occasion to consider how the WCB's chronic-pain policy may or may not comply with the requirements of the Act. However, the WCB's board of directors, already committed to an 86n review of *Decision No. 915A* in conjunction with its review of *Decision No. 519* and associated decisions and the retroactivity issue which they present, was moved by *Decision No. 915A*'s identification of the potential difference between the WCB and the Tribunal with respect to the issue of the compensability of pain magnification to now also bring *Decision No. 915* under that same review.

In that review process, which now includes *Decision Nos. 519* (and related decisions), *915* and *915A*, the board of directors intends not only to deal with the retroactivity issue and the issues concerning the compensability of chronic-pain conditions, but also the issues concerning the Tribunal's obligations with respect to policy determinations by the board of directors. The agenda for that review can be found in *The Ontario Gazette Vol. 121-44* (October 29, 1988) at 5546.

As of the end of the reporting period, the board of directors was still receiving submissions on these issues.

2. Fibromyalgia

In Appeals Tribunal *Decision No. 18* (March 11/87), the Tribunal had held that the condition referred to by the medical profession as fibromyalgia syndrome and sometimes also referred to as fibrositis was a disabling condition caused by organic pathology which could result from an industrial accident. It was, therefore, a compensable condition under the terms of the Workers' Compensation Act.

Previous to this, the WCB's policy was that a condition diagnosed as fibrositis or fibromyalgia was not compensable. Like chronic-pain cases, it was not compensable either because the condition was all in the worker's head and subject to being overcome if only the worker was sufficiently motivated to get back to work, or it could not be said to have been caused by the work-related accident.

When Tribunal *Decision No. 18* was released, the WCB's staff recommended to the board of directors that the question of whether or not the decision should be subjected to a section 86n review be postponed and that the WCB's staff be authorized to undertake a review of the WCB's fibromyalgia policy with a view to coming back to the board of directors at a later stage with a recommendation as to whether or not a review was appropriate. The WCB's staff also recommended that, in the meantime, *Decision No. 18* should be implemented. The board of directors accepted this recommendation, and the WCB's staff embarked upon a study of fibromyalgia and its compensability.

While the study was in process, the WCB continued to apply its existing policy of not compensating such cases, while the Appeals Tribunal followed the lead of *Decision No. 18* and in

APPENDIX C

a number of subsequent cases of fibromyalgia directed that compensation be paid. The WCB continued to implement the Tribunal's decisions in this respect while reserving on the question of a 86n review of such cases pending completion of the WCB's study.

The WCB staff's final recommendation to the board of directors concerning the compensability of fibromyalgia was not presented to the board until November, 1988. In the interval several Tribunal decisions directing compensation benefits to be paid in respect of fibromyalgia conditions had been implemented by the WCB.

The WCB's review of the compensability of fibromyalgia culminated in the staff recommending to the board of directors that it now adopt a new policy recognizing the compensability of disabling conditions diagnosed as fibromyalgia. The proposed policy was based on the similarities between a diagnosis of fibromyalgia and a diagnosis of chronic pain. It called for the WCB to proceed on the basis that the two conditions are not for practical purposes significantly distinguishable and to fold the fibromyalgia cases into the WCB's, chronic-pain disorder policy. Most significantly, the staff recommended that the chronic-pain policy's limit on the retroactive payment of benefits -- that is not to pay such benefits for any period prior to July 3, 1987 -- should also be applied to fibromyalgia cases.

With respect to the decisions of the Tribunal in which the payment of benefits had been ordered without any limit on their retroactivity and which had been implemented by the WCB in the meantime, the WCB's staff recommended that no recovery of overpayments be sought. The single exception to this was a case in which a permanent pension had been ordered to be paid on the basis of a fibromyalgia diagnosis. The staff felt that it was consistent with its approach to Tribunal decisions awarding permanent pensions for chronic pain for periods prior to July 3, 1987, to subject the latter case to the 86n review process now under way with respect to *Decisions 519, Decision No. 915 and Decision No. 915A*. The board of directors accepted the staff's recommendations and adopted the proposed new policy on fibromyalgia.

3. The Payment of Interest On Delayed Benefits

Tribunal *Decision No. 206A* (Aug. 18/88) dealt with the contentious question of the WCB's obligation to pay interest on delayed or incorrectly withheld benefits. Apart from its substantive conclusion, and the WCB's reaction to that conclusion, the decision is interesting in the context of this further account of the developing Tribunal-WCB relationship for its extensive discussion and treatment of the question of the Tribunal's jurisdiction to consider and determine issues that arise at the Appeals Tribunal level but which the WCB has previously had no occasion to consider.

On the substantive point, *Decision No. 206A* found that the law concerning the payment of interest on delayed or withheld benefits had changed in recent years. It concluded that applying the new law in this respect to the interpretation of the Workers' Compensation Act lead to the conclusion that the WCB was obligated to pay interest.

The WCB's staff reviewed *Decision No. 206A* and advised the board of directors that while it did not agree there was any obligation under the Act to pay interest, it did appear that there was now the authority to do so. The staff recommended that, without prejudice to the view that the WCB is not required to pay interest, the board of directors should decide not to review *Decision No. 206A* and to approve the payment of interest on delayed or incorrectly withheld benefits.

The board of directors accepted the recommendation and directed the staff to develop recommendations covering the details of an interest-payment policy. As of the end of the reporting period these recommendations were still pending.

PRACTICE DIRECTION NO: 9

SUBJECT: PERMANENT PENSIONS -- CHRONIC PAIN

1. This Practice Direction governs all permanent pension appeals and applications for leave to appeal in respect of decisions of the Board dated before October 1, 1987. The October 1 date has been chosen to allow for the post-July 3 period in which the Board would have been engaged in putting administrative arrangements in place for the application of its new chronic pain policy in its decision-making processes.
2. In all such cases, where there are reasonable grounds to believe that the worker's disability or any significant part thereof is potentially related to a chronic pain condition, the case shall be referred to the Board for it to review the file in the light of its new chronic pain disorder policy. The Tribunal's further consideration of the case will be postponed until the Tribunal can have the benefit of the Board's final decision concerning the application of that policy to the case. A copy of the worker's file will be made available to the Board for that purpose.
3. When, following the referral, the Board has made its final decision, the Tribunal will, upon the request of the appellant or applicant, resume its consideration of the case.
4. Consideration of benefit entitlement prior to July 3, 1987, will also be postponed in such cases until after the Board has decided on the application of its policy in respect of the post-July 3 period.
5. This Practice Direction is predicated on the Tribunal's confidence that the Board's review of these files will be expedited appropriately having regard to the delays to which these cases have already been subject. Should the review by the Board be unreasonably delayed, the Tribunal reserves the right to resume hearing and determining the case without waiting for the Board's final decision.
6. The Tribunal Counsel Office will identify those cases in which the application of this policy will, in its opinion, probably lead to a postponement of the appeal or application. With respect to such cases, the Tribunal Counsel Office will seek confirmation of the Board's intention to review the file. Upon receipt of such confirmation, affected parties will be advised of the Tribunal Counsel Office's opinion as to the probable application of this postponement policy to their case.
7. Parties who wish to contest the application of this Practice Direction to their case will be granted a hearing before a Tribunal hearing panel to consider the following issues:
 - (a) Does this Practice Direction as written apply to their case?
 - (b) If it does, then having due regard for the reasons for the Direction, is there justification for granting an exception to the Practice Direction?
8. The Practice Direction will be applied at whatever stage of the Tribunal's process the identification of permanent pension chronic- pain-related issues is made, and will extend to the few cases in which hearings have already been held (and no final decision issued as of the date of this Practice Direction) subject, of course, to due consideration of the paragraph no. 7 issues in the light of any submissions of the parties in respect of such issues.

9. Appellants or applicants may act on the advice of the Tribunal Counsel Office and accept without protest postponement of their cases for the purpose of the Board review, without prejudice to their subsequent rights.

10. The Tribunal would emphasize that its identification of a case to which this Practice Direction applies does not indicate a Tribunal decision that chronic pain in fact exists in that case or that there is any entitlement to benefits in respect of a chronic pain condition. Those are issues which will remain to be determined by the Board in the first instance subject to Tribunal review upon appeal. The application of the Practice Direction indicates only the Tribunal's identification of the existence of chronic-pain-related issues.

EXPLANATION

Background

This Practice Direction addresses issues which have arisen with respect to the Tribunal's handling of permanent pension appeals (and applications for leave to appeal) with respect to permanent pension cases.

The hearing of permanent pension appeals was put on hold by the Tribunal in December 1985, pending completion of its pension assessment appeals leading case strategy. This strategy involved the Appeals Tribunal hearing one selected pension appeal in which the Workers' Compensation Board, and invited intervenors from the employer and worker communities, participated with the parties in providing the Tribunal with information, evidence and submissions on the very difficult issues which arise in permanent pension appeals. Following 27 days of hearings, the Tribunal issued its Decision No. 915.

Decision 915 is a lengthy decision in which pension appeals issues are analyzed in considerable depth with a view to providing an informed starting point for Tribunal hearing panels in other pension appeal cases. The decision dealt with two major issues: the interpretation of section 45(1) and chronic pain.

In the chronic pain part of Decision 915 the Tribunal concluded that disabilities attributable to enigmatic chronic pain did occur, and when they occurred in circumstances which established a significant causative role for a preceding industrial injury they were compensable. These were conclusions which were inconsistent with the Board's views on the same issues. However, during the period when the 915 case was being heard and decided, the Board was also engaged in its own policy review concerning the compensability of chronic pain disorders. Decision 915 issued in May 1987, and on July 3, 1987, the WCB Board of Directors approved a new Board policy governing permanent pension compensation for disabilities attributable to chronic pain disorders resulting from industrial injuries. The new policy defines chronic pain disorders and establishes pension assessment policies in respect of disabilities attributable to such disorders.

The new Board policy makes no reference to Decision 915 and the compatibility between 915 and the Board's new policy remains unexplored.

It is apparent that the Board's new chronic pain policy and Decision 915 both mark a major departure from previous policies in Canadian workers' compensation systems. It is also apparent that they both mark the very beginning of a policy development process that promises to be long and difficult. It is obvious from the Decision 915 analysis and the nature of the Board's new policy that permanent pensions for workers for disabilities attributable to chronic pain disorders involve numerous difficult and complex questions the answers to which can be expected to

APPENDIX C

Schedule 1

develop only through the experience of actually applying the policy to a range of concrete particular cases.

In July 1987, the Tribunal began scheduling hearings of permanent pension cases which had previously been on hold pending the 915 decision. As of the date of this Practice Direction, hearings have been held in a number of cases but decisions have not been completed in any case. Hearing panel experiences with these cases have served, however, to confirm how often chronic pain may be expected to be a potential factor in pension appeals and to impress the Tribunal even further as to the difficulty and complexity of the issues in these cases.

It is against the background of these developments that the procedural issues involved in this Practice Direction fell to be considered.

Reasons for the Direction

In the three months since the adoption by the Board of its new chronic pain policy, the Tribunal has become aware of the Board's staff's concern that the Board's role in the primary development of compensation policy is threatened in respect of the chronic pain policy by the Tribunal hearing and deciding permanent pension chronic pain issues in the first instance. The occasion for the Tribunal going first on these issues arises because of the number of pension decisions on appeal to the Tribunal which pre-date the Board's new policy (about 500 cases). Indeed, in an exchange of views between the Board's Acting General Counsel and the Tribunal's General Counsel, the Board's staff has made its view clear that as of July 3, 1987, the legislation prevents the Tribunal from hearing any issues related to permanent pensions for chronic pain disorders which the Board has not had an opportunity to consider in the light of its new policy. The Board's staff relies for this view on section 86g(2) of the Workers' Compensation Act.

The Tribunal has had no occasion so far to address in the context of a particular case the issue of jurisdiction to hear and determine permanent pension chronic pain issues in the absence of the Board having had an opportunity, post-July 3, 1987, to consider such issues in the light of its new chronic pain disorder policy. However, the broad outlines of the competing arguments are easily discerned. Section 86g(2) may properly be read as prohibiting the Tribunal from hearing, determining or disposing of an appeal respecting issues of health care, vocational rehabilitation, entitlement to compensation or benefits, assessments, penalties or the transfer of costs unless the procedures established by the Board for consideration of such issues have been exhausted. The argument in favour of the position taken by the Board's staff in respect of this matter is, presumably, that since July 3, 1987, the Board has an established procedure for considering permanent pension chronic pain issues, and that with respect to chronic pain issues in cases decided by the Board prior to July 3, and on appeal to the Tribunal, those procedures have not been applied, much less exhausted. Thus, it can be argued, as of July 3 the Tribunal lost jurisdiction to consider permanent pension chronic pain issues in those cases until the Board has the opportunity to consider those issues in the light of its new policy.

The counter-argument is equally apparent. Satisfaction of the requirement that the procedures in respect of any particular issues have been exhausted is to be judged as of the date of the decision appealed. If all procedures have been exhausted and the decision is final at the time it is made, the right of appeal under section 86o(1) arises, and the subsequent creation of relevant procedures by the Board cannot affect the matter.

The Tribunal has also been made aware of the Board's staff's intention to have the Board review the files of all permanent pension cases on appeal to the Appeals Tribunal involving chronic pain issues with a view to now considering and deciding those issues through the application of the Board's new policy on chronic pain disorders. The Tribunal had been asked to provide the Board

with a list of such cases for that purpose. It is the Tribunal's understanding that in reviewing the files for this purpose the Board will consider all related issues such as possible entitlement to sections 45(5) and 45(7) supplements, the availability of medical or vocational rehabilitation programs, etc.

To avoid misunderstanding, it is to be noted that the Board does not intend its new policy to have any retroactive effect prior to July 3, 1987. It will not be considering benefits entitlement in respect of any period prior to that date. The issue of the retroactivity of permanent pension benefits in respect of chronic pain was reserved in Decision 915 pending further argument. That argument has now been heard and the Decision 915 Hearing Panel is in the process of deciding that issue.

All of the foregoing circumstances, including the Tribunal's experience so far in dealing with pension appeals involving chronic pain issues, have identified for the Tribunal a number of concerns with the prospect of the Tribunal issuing decisions on permanent pension chronic pain issues before the Board has had an opportunity to consider the application of its new policy to those issues. These concerns are listed below. Not included in the list, it should be noted, is the question of jurisdiction. The Tribunal has always assumed that it had jurisdiction to hear appeals of Board decisions where at the time the decision was made the decision was final and all procedures in place at that time for consideration of the matters mentioned in sections 86g(1)(b) and (c) had been exhausted. Until that view of the Tribunal's jurisdiction is challenged in a particular case, the Tribunal believes it is right and necessary to proceed on the basis that that view of the Tribunal's jurisdiction is correct.

The list of the Tribunal's concerns is as follows:

1. It is true that the substance of the new chronic pain permanent pension policy will, as a practical matter, emerge gradually through the application of the newly proclaimed policy to individual concrete cases. Whoever has the role of making decisions concerning the application of the new policy to individual cases in the first instance is likely to have a substantial special influence on the direction that policy development takes. And whatever one may think of the competing arguments concerning jurisdiction in the particular circumstances of these cases, there is no doubt that as a general rule the Legislature intended this primary role for the Board and not for the Tribunal. See the explicit recognition of this fact in Tribunal Decision 3 and the Interim Report in the Pension Assessment Appeals Leading Case Strategy. The possibility that the Tribunal would have the primary role in a substantial number of early chronic pain permanent pension cases arises only because of the chance chronology of the particular events leading up to the introduction of the Board's new policy.
2. If the Tribunal proceeds to hear these cases without the benefit of an original Board decision in respect of the permanent pension chronic pain issues, the application of the new policy to those decisions will be decided in a process involving the possibility of one decision only (not counting the possible Section 86n Review). In respect of issues of such difficulty, novelty and complexity, this is arguably not an appropriate process. And this is true from the perspective of the system as well as from the perspective of the parties.
3. In chronic pain cases, as in other cases, it is especially difficult to consider questions of possible treatment, availability of vocational rehabilitation resources and questions concerning entitlement to supplements, without the Board's initial input. Leaving aside jurisdiction questions, these are issues which inherently require initial consideration by the Board and which in other cases the Tribunal typically refers back to the Board for initial decision when they arise for the first time at the Tribunal level as a result of a finding in favour of entitlement.

4. As far as the assessment of permanent pension benefits related to chronic pain disorders is concerned, for the reasons set out at length in Decision 915, a Tribunal hearing panel is likely to require a pension reassessment by Board doctors before it will be in a position to come to its own conclusion. Furthermore, in the interests of avoiding the development of two pension assessment systems in respect of chronic pain--one applied by the Board and another applied by the Tribunal--it is really essential that the Tribunal be in the position of reviewing the Board's assessment in any particular case rather than developing one of its own. It is true that in Decision 915, the Tribunal determined the assessment itself, but that was with the assistance of reassessment evidence from Board doctors and at a time when the Board had no chronic pain assessment policy. It follows, therefore, that even if the Tribunal were to proceed with the cases now before it without waiting for the Board review, hearing panels could be expected to routinely refer at least the assessment question back to the Board for initial determination.

5. It is apparent, therefore, that for the reasons set out in paragraphs 3 and 4, there will almost certainly have to be a referral of very substantial matters to the Board in virtually all chronic pain permanent pension cases, however the procedural questions are dealt with.

6. The Board's decision to undertake its own review of the potential application of its new chronic pain disorder policy to the permanent pension cases now on appeal to the Tribunal creates the situation where, if the Tribunal proceeds in the ordinary course, it will be considering appeals from the Board's original decisions while knowing that the Board is in the process of producing a new decision. The Tribunal's decisions on the appeals and the Board's new decisions on the same cases are likely to appear at about the same time. The Board's new decisions will be appealable in the ordinary course to the Tribunal and the Board is likely to regard its new decisions as superceding its original decisions. In those circumstances, it is to be expected that the status of the Tribunal's decision on the appeal of the original decision would be uncertain.

7. In the nature of things, particularly at this early stage of the development of chronic pain concepts, it is also reasonable to expect that the Board's new decisions and the Tribunal's decisions on the appeal of the original decisions will not always come to the same conclusion on either the facts or the medical or legal issues.

8. The potential for confusion in the circumstances described in paragraphs 6 and 7 is remarkable, as is the potential for litigation and a further period of delay and uncertainty. In the Tribunal's view, given the complexity and difficulty of compensation issues in permanent pension chronic pain cases, and having regard to the history of delay that already pertains with respect to these cases, it is essential that the development of law and policy in respect of these issues now proceed in as straightforward a manner as possible. This, too, is important not only from the parties' perspective but also from the system's perspective.

Having regard to all of the foregoing, the Tribunal has decided that it is now necessary to adopt a procedure with respect to permanent pension appeals which will ensure that permanent pension compensation issues related to chronic pain disorders will not be addressed by the Tribunal until after the Board has had an opportunity to consider the application of its new policy to those issues. The foregoing Practice Direction has been designed with that end in view.

Dated at Toronto, October 23, 1987

Workers' Compensation Appeals Tribunal

S. R. Ellis

Chairman

WORKERS' COMPENSATION APPEALS TRIBUNAL

THIRD REPORT

APPENDIX D

INCOMING CASELOAD STATISTICS

1. Monthly Breakdown of Incoming Appeals
2. Case Input by Type of Appeal
3. Case Input by Type of Appeal
(During 39-month Period)

APPENDIX D

MONTHLY BREAKDOWN OF INCOMING APPEALS

DESCRIPTION	Previous Year																Period		
	Total	10/87	11/87	12/87	01/88	02/88	03/88	04/88	05/88	06/88	07/88	08/88	09/88	10/88	11/88	12/88	To Date Total	39 Month Total From Oct. 1985	
* 10/87 11/87 12/87 01/88 02/88 03/88 04/88 05/88 06/88 07/88 08/88 09/88 10/88 11/88 12/88																			
INPUT BY TYPE : **																			
S86o	120	7	1	9	4	11	6	3	4	10	4	4	4	4	2	4	77	484	7.5%
S15	97	10	6	9	8	8	8	3	8	3	10	3	14	2	4	7	103	322	5.0%
S21	79	4	8	4	1	5	4	14	9	7	8	4	3	10	5	1	87	210	3.3%
S77	317	28	18	25	32	21	25	19	23	23	32	13	16	16	14	21	326	764	11.9%
Pension	192	8	6	8	9	3	4	1	0	2	0	0	2	0	1	0	44	588	9.1%
Commutation	15	2	2	4	1	2	0	1	0	4	0	1	6	0	0	2	25	43	0.7%
Employer Assessment	29	0	0	2	1	2	3	0	0	0	0	1	1	2	1	1	14	67	1.0%
Judicial Review	7	0	0	0	0	0	1	0	2	1	0	0	0	0	0	0	4	13	0.2%
Ombudsman's Request	48	0	7	11	0	6	10	7	8	12	4	5	19	4	2	8	103	156	2.4%
Reconsideration	48	5	3	7	8	8	7	9	5	1	2	7	5	9	5	12	93	148	2.3%
No Jurisdiction	54	3	0	0	2	1	5	0	3	3	2	0	2	0	0	1	22	234	3.6%
Entitlement	877	58	54	66	87	72	90	51	76	65	90	56	61	65	57	85	1,033	3,417	53.1%
Total	1,876	125	105	145	153	139	163	108	138	131	152	94	133	112	91	142	1,931	6,439	100.0%

S.86o - Leave to appeal applications.

S.15 - Applications for ruling as to whether Act prohibits civil litigation.

S.21 - Worker's objection to attending at employer organised medical examination.

S.77 - Appeals on WCB decisions concerning access to worker's files.

Pension - Permanent partial disability pension appeals.

Commutation - Appeals from WCB decisions on worker's application for payment of lump sum in lieu of period payments.

Employer Assessment - Appeals by employer of WCB assessment decisions.

Judicial Review - Application to the divisional court for review of a Tribunal decision.

Ombudsman's Request - Inquiry from the Ombudsman following complaints regarding Tribunal decisions.

Reconsideration - Application for the Tribunal to reconsider a decision of the Tribunal.

No Jurisdiction - Cases found at a preliminary stage not to be within the jurisdiction of the Tribunal.

Entitlement and Others - Regular appeals from WCB decisions on entitlement and quantum plus a few miscellaneous matters.

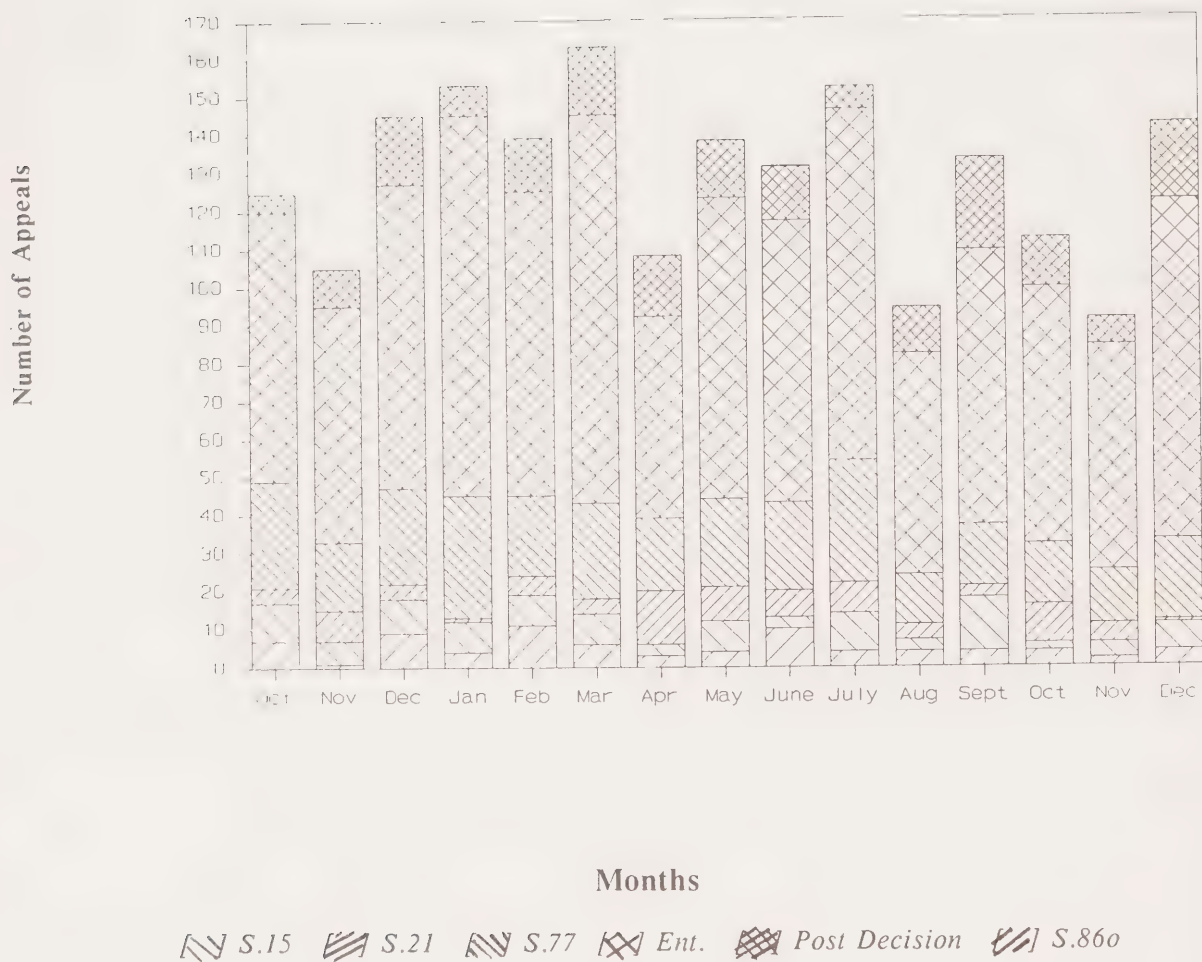
* Prior year adjustments - 23 cases for the first reporting period and 22 cases for the second reporting period.

** Based on the date of receipt of WCB files

APPENDIX D

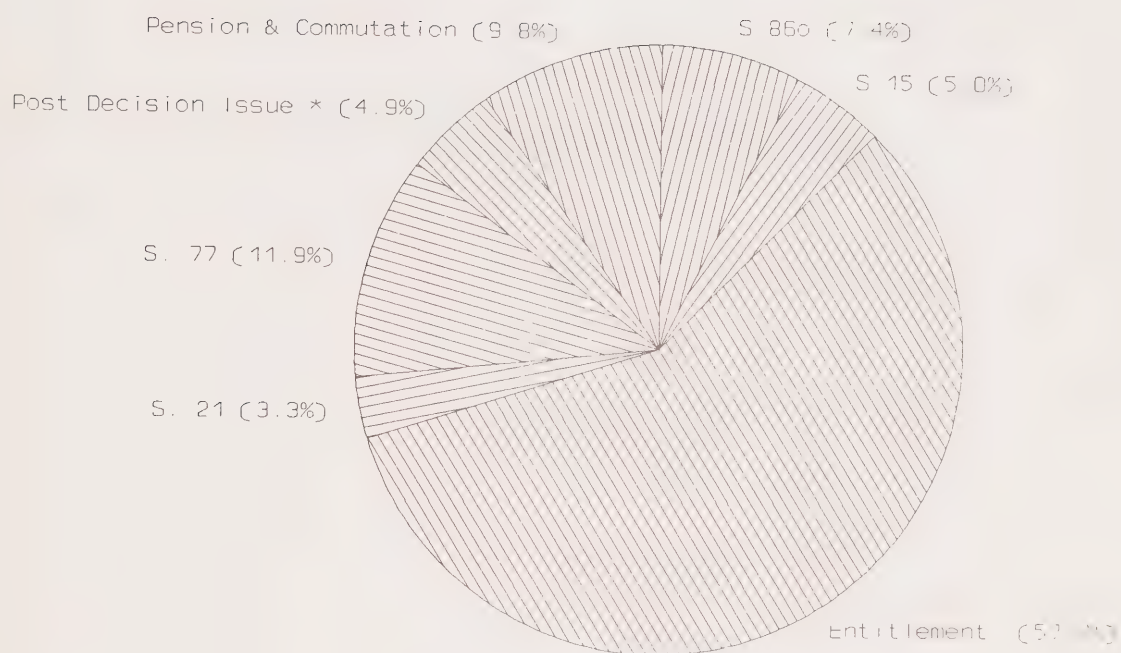
CASE INPUT BY TYPE OF APPEAL

October 1987 to December 1988



CASE INPUT BY TYPE OF APPEAL

During 39 month period



**Post-Decision issues include reconsideration applications, Ombudsman's inquiries and judicial review cases.*

WORKERS' COMPENSATION APPEALS TRIBUNAL

THIRD REPORT

APPENDIX E

CASELOAD STATISTICS

1. Monthly Production Statistics
2. Monthly Current Caseload Statistics
3. Summary of Current Caseload Statistics
4. Input and Output Trend

MONTHLY PRODUCTION STATISTICS

	Monthly Increments																	15-month Period To Date Total	39 Month Total From Oct 1985
	Previous Year Total	10/87	11/87	12/87	01/88	02/88	03/88	04/88	05/88	06/88	07/88	08/88	09/88	10/88	11/88	12/88			
	*	**																	
INPUT:																			
Number of Cases	1,876	125	105	145	153	139	163	108	138	131	152	94	133	112	91	142	1,931	6,439	
OUTPUT:																			
Cases Withdrawn	286	13	18	15	19	17	37	19	23	21	11	11	34	18	30	25	311	744	16.5%
Cases with no jurisdiction	78	1	5	1	0	5	7	2	0	16	6	9	3	5	3	2	65	305	6.8%
Other	11	1	0	0	1	2	7	8	7	3	6	2	2	12	8	42	101	116	2.6%
Cases disposed due to dormancy	80	9	2	4	3	3	23	0	1	5	4	1	6	16	4	0	81	161	3.6%
Cases settled	51	9	5	13	9	7	10	14	6	16	12	9	7	4	8	5	134	190	4.2%
Disposition of post-decision cases @	45	0	4	11	6	4	8	3	10	8	7	10	9	15	11	12	118	163	3.6%
Disposition through Case Direction Panel	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0.1%
Total non-hearing disposal (A)	553	33	34	44	38	38	92	46	47	69	46	42	61	70	64	86	810	1,682	37.3%
Cases with final decisions issued (B)	952	70	92	138	82	112	121	108	133	134	115	96	103	98	80	149	1,631	2,833	62.7%
TOTAL CASES FINALLY DISPOSED OF (A+B)#	1,505	103	126	182	120	150	213	154	180	203	161	138	164	168	144	235	2,441	4,515	100.0%

Notes:

* Prior Year Adjustments to incoming appeals - 23 cases for first reporting period and 22 cases for second reporting period.

** Columns show monthly additions only.

^a These are dispositions of Reconsideration Application, Ombudsman's Request and Judicial Review cases.

[#] These figures exclude interim decisions and decisions on reconsideration applications.

MONTHLY CURRENT CASELOAD STATISTICS

	As at End of Previous Year End 30-Sep-87	10/30 1987	11/30 1987	12/31 1987	01/29 1988	02/26 1988	04/01 1988	04/29 1988	05/27 1988	07/01 1988	07/29 1988	08/26 1988	09/30 1988	10/28 1988	11/25 1988	12/30 1988
CASES AT PRE-HEARING STAGE : *	1,631	1,643	1,643	1,652	1,692	1,706	1,688	1,670	1,695	1,648	1,661	1,657	1,640	1,591	1,539	1,510
POST-HEARING CASES :																
Recessed	68	63	64	62	61	58	53	54	49	39	36	39	49	46	46	43
Complete but on hold	165	177	172	182	195	172	163	145	147	124	128	107	100	106	116	101
Ready-to-write decision	525	531	526	489	468	445	445	416	377	355	352	340	333	321	315	270
TOTAL CASES AT POST-HEARING STAGE	758	771	762	733	724	675	661	615	573	518	516	486	482	473	477	414
TOTAL CASELOAD	2,389	2,414	2,405	2,385	2,416	2,381	2,349	2,285	2,268	2,166	2,177	2,143	2,122	2,064	2,016	1,924

Note:

* This figure includes Pension-Chronic Pain cases.

SUMMARY OF CURRENT CASELOAD STATISTICS

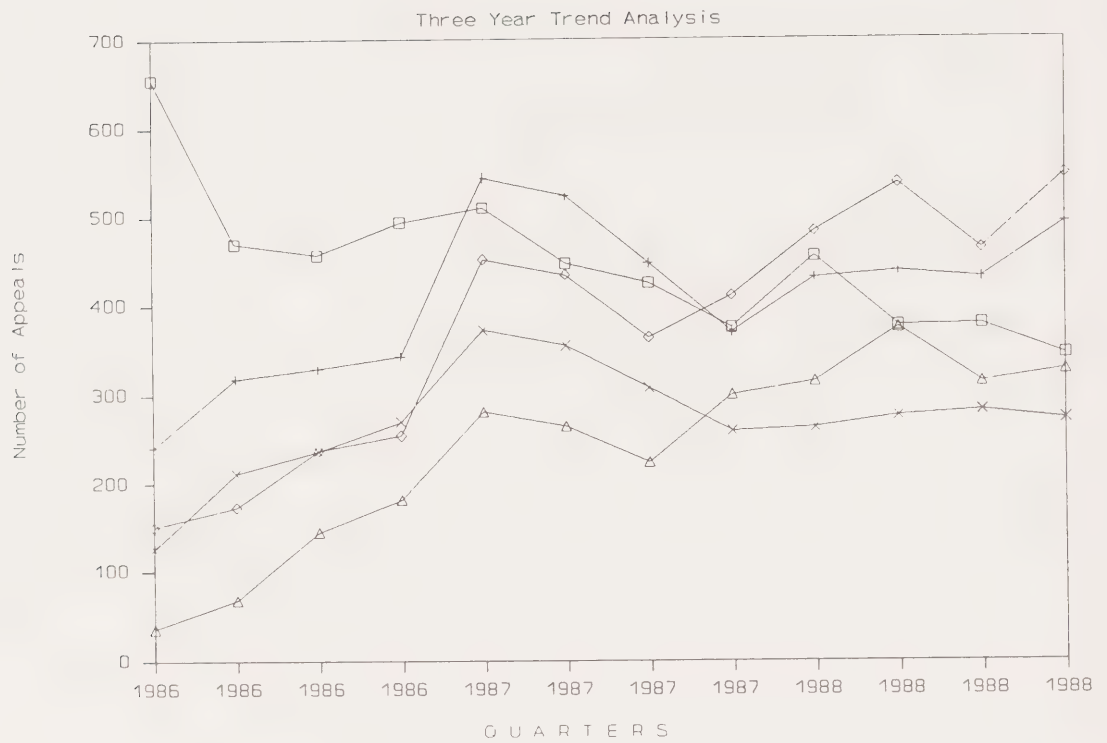
As at end of Reporting Period

December 30, 1988

Incoming cases over 39 months	6,439
Output of cases over 39 months	4,515
Current caseload at end of reporting period :	
At Pre-hearing Stage	1,510
At Post-hearing Stage	414

Total Current Caseload	1,924
	=====

INPUT AND OUTPUT TREND



- ◆ Decisions and Non-Hearing Dispositions
- + Hearings and Non-Hearing Dispositions
- Input
- ▲ Decisions
- X Hearings

WORKERS' COMPENSATION APPEALS TRIBUNAL
THIRD REPORT

APPENDIX F

FINANCIAL STATEMENTS FOR FISCAL PERIODS

1. Statement of Expenditure - 9 Months
2. Variance Report - 9 Months
3. Statement of Expenditure - 12 Months
4. Variance Report - 12 Months

STATEMENT OF EXPENDITURE

For nine month period ending December 31, 1988

(In 1,000s)

	04/88 TO 12/88 BUDGET	04/88 TO 12/88 ACTUAL
<hr/>		
SALARIES & WAGES		
1310 SALARIES & WAGES - REGULAR	3,015.0	2,967.0
1320 SALARIES & WAGES - OVERTIME	37.5	40.5
1325 SALARIES & WAGES - CONTRACT	360.0	208.5
1510 TEMPORARY HELP - GO TEMP.	52.5	37.2
1520 TEMP. HELP-OUTSIDE AGENCIES	52.5	136.8
	<hr/>	
TOTAL SALARY AND WAGES	3,517.5	3,390.0
<hr/>		
EMPLOYEE BENEFITS		
2110 CANADA PENSION PLAN	0.0	38.1
2130 UNEMPLOYMENT INSURANCE	0.0	75.0
2220 PUB. SER. SUPERANNUATION FUND	0.0	76.1
2230 P.S.S.F. ADJUSTMENT FUND	0.0	15.7
2260 P.S.S.F. UNFUNDED LIABILITIES	0.0	0.0
2310 ONTARIO HEALTH INSURANCE PLAN	0.0	36.3
2320 SUPPL. HEALTH & HOSPITAL PLAN	0.0	20.1
2330 LONG-TERM INCOME PROTECTION	0.0	15.6
2340 GROUP LIFE INSURANCE	0.0	7.0
2350 DENTAL PLAN	0.0	20.3
2410 WORKER'S COMPENSATION	0.0	1.1
2520 MATERNITY SUPP. BENEFIT ALL.	0.0	38.3
2990 BENEFITS TRANSFER (16.58%)	0.0	0.0
	<hr/>	
TOTAL EMPLOYEE BENEFITS	465.8	343.8
<hr/>		
TRANSPORTATION & COMMUNICATION		
3110 COURIER/OTHER DELIVERY CHARGES	33.8	25.1
3111 LONG DISTANCE CHARGES	11.3	10.1
3112 BELL TEL. - SERVICE ,EQUIPMENT	45.0	37.2
3210 POSTAGE	40.5	31.8
3410 RELOCATION EXPENSES	7.5	0.0
3610 TRAVEL - ACCOMMODATION & FOOD	75.0	35.0
3620 TRAVEL - AIR	0.0	25.7
3630 TRAVEL - RAIL	0.0	0.8
3640 TRAVEL - ROAD	0.0	15.0
3660 TRAVEL - CONFERENCES, SEMINARS	18.8	19.3
3680 TRAVEL - ATTENDANCE (HEARINGS)	26.3	28.7
3690 TRAVEL - PROFESS.& PUB. OUTREACH	6.0	4.2
3720 TRAVEL - OTHER	0.0	1.2
3721 TRAVEL - PT VICE CHAIR & REPS	41.3	30.3
	<hr/>	
TOTAL TRANSPORTATION & COMMUNICATION	305.3	264.3
<hr/>		

APPENDIX F

SERVICES

4120 PUBLIC RELATIONS	0.0	0.0
4130 ADVERTISING - EMPLOYMENT	7.5	14.7
4210 RENTALS - COMPUTER EQUIPMENT	0.0	57.2
4220 RENTALS - OFFICE EQUIPMENT	7.5	6.2
4230 RENTALS - OFFICE FURNITURE	0.8	1.3
4240 RENTALS - PHOTOCOPYING	67.5	89.6
4260 RENTALS - OFFICE SPACE	600.0	660.6
4261 RENTALS - HEARING ROOMS	15.0	12.2
4270 RENTALS - OTHER	0.8	0.0
4310 DATA PROCESS SERVICE	18.8	14.5
4320 INSURANCE	3.8	0.0
4340 RECEPTIONS - HOSPITALITY	15.0	34.6
4341 RECEPTIONS - RENTALS	0.0	0.5
4350 WITNESS FEES	22.5	15.6
4351 PROCESS SERVERS - SUBPOENAS	4.5	2.7
4360 PER DIEM ALLOW-PT VC. & REPS	375.0	292.9
4410 CONSULTANTS - MGT. SERVICES	18.8	53.3
4420 CONSULTANT-SYSTEMS DEVELOPMENT	0.0	55.4
4430 COURT REPORTING SERVICES	90.0	79.9
4431 CONSULTANTS - LEGAL SERVICES	18.8	2.0
4435 TRANSCRIPTION	75.0	58.0
4440 MED. FEE-PER DIEM/RETAINER/REP	225.0	138.3
4460 RESEARCH SERVICES	3.8	0.0
4470 PRINT-DEC./NEWSLTRS/PAMPHLETS	150.0	89.0
4520 REPAIR/MAIN.-FURNIT./OFF.EQUIP.	11.3	39.7
4710 OTHER-INCL. MEMBERSHIP FEES	22.5	47.8
4711 TRANSLATION & INTERPRET. SER.	45.0	35.7
4712 STAFF DEVELOPMENT-COURSE FEES	45.0	20.3
4713 FRENCH TRANSLATION SERVICES	56.3	31.0
4714 OTHER FRENCH COSTS	0.0	0.0

TOTAL SERVICES

1,899.8 1,853.2

SUPPLIES & EQUIPMENT

5090 PROJECTORS, CAMERAS, SCREENS	0.0	0.0
5110 COMPUTER EQUIP. INCL. SOFTWARE	0.0	0.0
5120 OFFICE FURNITURE & EQUIPMENT	22.5	0.0
5130 OFFICE MACHINES	7.5	0.0
5710 OFFICE SUPPLIES	37.5	89.6
5720 BOOKS, PUBLICATIONS, REPORTS	30.0	37.1

TOTAL SUPPLIES & EQUIPMENT

97.5 126.8

TOTAL OPERATING EXPENDITURES

6,285.8 5,978.0

CAPITAL EXPENDITURES

337.5 307.6

TOTAL EXPENDITURES

6,623.3 6,285.6

VARIANCE REPORT*For nine month period ending December 31, 1988**(in 1,000s)*

	1987/88 Annual Budget	1987/88 Annual Expenditure	VARIANCE \$	%
Salaries & Wages	3,517.5	3,390.0	127.5	3.6
Employee Benefits	465.8	343.8	122.0	26.2
Transportation & Communications	305.3	264.3	41.0	13.4
Services	1,899.8	1,853.2	46.6	2.5
Supplies & Equipment	97.5	126.8	-29.3	-30.0
Total Operating Expenditures	6,285.8	5,978.0	307.9	4.9
Capital Expenditures	337.5	307.6	29.9	8.9
Total Expenditures	6,623.3	6,285.6	337.8	5.1

APPENDIX F

STATEMENT OF EXPENDITURE

For 12 months ending March 31, 1988

(In 1,000s)

	1987/88 Annual Budget	1987/88 Actual Expenditure
<hr/>		
SALARIES & WAGES		
1310 SALARIES & WAGES - REGULAR	3,706.8	3,303.3
1320 SALARIES & WAGES - OVERTIME	25.0	52.4
1325 SALARIES & WAGES - CONTRACT	0.0	511.5
1510 TEMPORARY HELP - GO TEMP.	0.0	71.0
1520 TEMP. HELP-OUTSIDE AGENCIES	150.0	205.4
	<hr/>	
TOTAL SALARY AND WAGES	3,881.8	4,143.6
	<hr/>	
EMPLOYEE BENEFITS		
2110 CANADA PENSION PLAN	0.0	45.6
2130 UNEMPLOYMENT INSURANCE	0.0	85.9
2220 PUB. SER. SUPERANNUATION FUND	0.0	79.9
2230 P.S.S.F. ADJUSTMENT FUND	0.0	17.0
2260 P.S.S.F. UNFUNDED LIABILITIES	0.0	0.0
2310 ONTARIO HEALTH INSURANCE PLAN	0.0	42.4
2320 SUPPL. HEALTH & HOSPITAL PLAN	0.0	18.9
2330 LONG-TERM INCOME PROTECTION	0.0	15.2
2340 GROUP LIFE INSURANCE	0.0	7.7
2350 DENTAL PLAN	0.0	19.4
2410 WORKERS' COMPENSATION	0.0	0.2
2520 MATERNITY SUPP. BENEFIT ALL.	0.0	6.3
2990 BENEFITS TRANSFER (16.58%)	0.0	0.7
	<hr/>	
TOTAL EMPLOYEE BENEFITS	577.8	339.0
	<hr/>	
TRANSPORTATION & COMMUNICATION		
3110 COURIER/OTHER DELIVERY CHARGES	25.0	51.6
3111 LONG DISTANCE CHARGES	15.0	16.1
3112 BELL TEL. - SERVICE ,EQUIPMENT	50.0	40.8
3210 POSTAGE	60.0	59.3
3410 RELOCATION EXPENSES	0.0	0.0
3610 TRAVEL - ACCOMMODATION & FOOD	180.0	51.4
3620 TRAVEL - AIR	0.0	29.6
3630 TRAVEL - RAIL	0.0	1.3
3640 TRAVEL - ROAD	0.0	21.3
3660 TRAVEL - CONFERENCES, SEMINARS	15.0	20.0
3680 TRAVEL - ATTENDANCE (HEARINGS)	150.0	39.6

3690 TRAVEL-PROFESS.& PUB. OUTREACH	25.0	3.6
3720 TRAVEL - OTHER	2.0	1.3
3721 TRAVEL-PT VICE CHAIR & REPS	24.0	58.7

TOTAL TRANSPORTATION & COMMUNICATION	546.0	394.7
--------------------------------------	-------	-------

SERVICES

4120 PUBLIC RELATIONS	10.0	5.0
4130 ADVERTISING - EMPLOYMENT	2.0	15.0
4210 RENTALS - COMPUTER EQUIPMENT	40.0	55.1
4220 RENTALS - OFFICE EQUIPMENT	7.5	39.0
4230 RENTALS - OFFICE FURNITURE	0.0	4.1
4240 RENTALS - PHOTOCOPYING	90.0	90.6
4260 RENTALS - OFFICE SPACE	643.1	738.1
4261 RENTALS - HEARING ROOMS	25.0	19.4
4270 RENTALS - OTHER	8.0	0.7
4310 DATA PROCESS SERVICE	10.0	62.2
4320 INSURANCE	5.0	0.0
4340 RECEPTIONS - HOSPITALITY	15.0	25.7
4341 RECEPTIONS - RENTALS	0.0	0.0
4350 WITNESS FEES	50.0	29.9
4351 PROCESS SERVERS - SUBPOENAS	5.0	7.6
4360 PER DIEM ALLOW-PT VC. & REPS	750.0	471.1
4410 CONSULTANTS - MGT. SERVICES	50.0	9.5
4420 CONSULTANT-SYSTEMS DEVELOPMENT	0.0	0.0
4430 COURT REPORTING SERVICES	180.0	110.3
4431 CONSULTANTS - LEGAL SERVICES	80.0	12.8
4435 TRANSCRIPTION	100.0	44.2
4440 MED. FEE-PER DIEM/RETAINER/REP	400.0	206.2
4460 RESEARCH SERVICES	10.0	0.3
4470 PRINT-DEC./NEWSLTRS/PAMPHLETS	180.0	177.4
4520 REPAIR/MAIN.-FURNIT./OFF.EQUIP.	8.0	24.9
4710 OTHER-INCL. MEMBERSHIP FEES	12.0	52.9
4711 TRANSLATION & INTERPRET. SER.	75.0	54.8
4712 STAFF DEVELOPMENT-COURSE FEES	64.0	31.1
4713 FRENCH TRANSLATION SERVICES	90.0	31.5
4990 MINISTRY OF LABOUR	100.0	0.0

TOTAL SERVICES	3,009.6	2,319.6
----------------	---------	---------

SUPPLIES & EQUIPMENT

5090 PROJECTORS, CAMERAS, SCREENS	3.0	0.5
5110 COMPUTER EQUIP. INCL. SOFTWARE	0.0	1.0
5120 OFFICE FURNITURE & EQUIPMENT	50.0	5.5
5130 OFFICE MACHINES	10.0	1.5
5710 OFFICE SUPPLIES	100.0	127.0
5720 BOOKS, PUBLICATIONS, REPORTS	50.0	46.4

TOTAL SUPPLIES & EQUIPMENT	213.0	181.9
----------------------------	-------	-------

TOTAL OPERATING EXPENDITURES	8,228.2	7,378.9
------------------------------	---------	---------

CAPITAL EXPENDITURES	1,650.0	1,549.6
----------------------	---------	---------

TOTAL EXPENDITURES	9,878.2	8,928.5
--------------------	---------	---------

APPENDIX F

VARIANCE REPORT

For 12 month period ending March 31, 1988

(in 1,000s)

	1987/88 Annual Budget	1987/88 Actual Expenditure	VARIANCE \$	%
Salaries & Wages	3,881.8	4,143.6	-261.8	-6.7
Employee Benefits	577.8	339.0	238.8	41.3
Transportation & Communications	546.0	394.7	151.3	27.7
Services	3,009.6	2,319.6	690.0	22.9
Supplies & Equipment	213.0	181.9	31.1	14.6
Total Operating Expenditures	8,228.2	7,378.9	849.3	10.3
Capital Expenditures	1,650.0	1,549.6	100.4	6.1
Total Expenditures	9,878.2	8,928.5	949.7	9.6

WORKERS' COMPENSATION APPEALS TRIBUNAL

THIRD REPORT

APPENDIX G

PROFILE OF REPRESENTATION

*EMPLOYER REPRESENTATION PROFILE **

Type of Representation	No. of Cases	Percentage
No Representation	1,274	44.1
Company Personnel	402	1.9
Lawyer	467	16.2
Other	649	22.5
Office of the Employer Advisor	95	3.3
Member of Parliament (MPP)	0	0
<hr/>		
Total Cases Disposed at hearing	2,887	100.0

*WORKER REPRESENTATION PROFILE **

Type of Representation	No. of Cases	Percentage
Union	531	18.4
No Representation	492	17.0
Lawyer	660	22.9
Other	474	16.4
Office of the Worker Advisor	605	21.0
Member of Parliament (MPP)	125	4.3
<hr/>		
Total Cases Disposed at hearing	2,887	100.0

* Information taken from released Tribunal decisions.

This is a change from the Second Report where the information was taken from file records at the intake stage. Experience indicates that the representation arrangements change over the course of the proceedings, so that this information at the beginning of the process is not an accurate indication of the actual representation at the hearing itself.

WORKERS' COMPENSATION APPEALS TRIBUNAL
THIRD REPORT

APPENDIX H
WEEKLY WORKLOAD ANALYSIS

WEEKLY WORKLOAD ANALYSIS

As At December 30th, 1988

1. INTAKE			
- Not ready for TCO assignment:			
- Awaiting initial processing-no transmittal (Note 3)		70	
- Intake On hold (transmittal completed):			
Not ready for TCO - waiting period	47		
Not ready for TCO - worker not represented	31	78	
2. INTAKE PROCESSING - CASE IN PROGRESS :			
Section 15		20	
Section 21		0	
Section 77	- Written Submissions	7	
	- In Progress	32	39
Section 860	- Written Submissions	0	
	- In Progress	31	31
TOTAL CASES IN INTAKE			238
3. TCO PROCESSING:			
Awaiting assignment into counsel office (Note 8)		84	
CD and case preparation in progress (Note 4)	94		
TCO on hold	76		
TOTAL CASES ASSIGNED TO TCO			170
TOTAL CASES IN TCO - PRE-HEARING			254
4. HEARING READY CASES:			
Transmittal forms not sent to Scheduling (Note 1)		42	
5. SCHEDULING:			
On hold-2 week waiting period		3	
Current: in progress		149	
Scheduled cases:			
JANUARY/88 (4 WEEKS)	110		
FEBRUARY/88 (4 WEEKS)	77		
MARCH/88 (5 WEEKS)	40		
APRIL/88 (4 WEEKS)	31		
MAY/88 (4 WEEKS)	16		
JUNE/88 (5 WEEKS)	12		
TOTAL SCHEDULED (Note 2)			286
TOTAL IN SCHEDULING			438
6. ** TOTAL ACTIVE PRE-HEARING WORKLOAD **			972
7. CASES ON HOLD (Note 6)			
Unschedulable cases in Scheduling (E)	113		
Pension cases not reviewed/reclassified	1		
Cases disposed/adjourned prior/at hearing (note 7)	4		
Dormant	22	140	

APPENDIX H

WEEKLY WORKLOAD ANALYSIS

As at December 30th, 1988

8. ** TOTAL PRE-HEARING WORKLOAD **	1,112
9. TOTAL POST-HEARING WORKLOAD:	
Cases pending decisions from Vice-Chairs	
: Final	269
: Interim	1
SUB-TOTAL	270
Cases heard in which hearing status is on hold:	
Complete on hold	98
Recessed	43
No known status	3
SUB-TOTAL	144
** TOTAL POST-HEARING WORKLOAD **	414
10. POST DECISION CASES:	
Clarification	0
Ombudsman's Request	79
Reconsideration (Note 5)	44
Judicial Review	6
** TOTAL POST DECISION CASES **	129
TOTAL CASES IN TRIBUNAL	1,655

WEEKLY WORKLOAD ANALYSIS*As At December 30th, 1988***Explanatory Notes:**

1. There are 42 cases indicated as hearing ready by TCO in which SCHEDULING has not received any transmittal forms.
2. The total scheduled cases of 286 do not include the following:

Reconvened Cases*	
January 1989	9
February 1989	4
March 1989	3
April 1989	1
May 1989	1
June 1989	1
TOTAL	<u>19</u>

* These cases have already been included in the post-hearing workload under "RECESSED" and "COMPLETE/HOLD" hearings.

* The figure also excludes cases with a tentative scheduled date.

3. This figure indicates the number of cases in which the Intake Transmittal forms have not been forwarded to Data-Entry for processing from Intake.
4. There are 35 cases in which the case description is indicated as "NO".
5. 35 of the 44 active Reconsideration applications are pending review from the hearing panel. In addition, there are 5 applications that are not assigned to any panel.
6. On hold (awaiting WCB review-Chronic Pain) is 269 cases.
 - * This number includes the 27 chronic pain cases that have been reclassified as " 860-CP " by Intake.
 - * This number excludes the chronic pain cases that have been assigned to TCO (7 cases) and 10 cases heard previously.

The total number of cases identified as Pension - Chronic Pain is 286 cases in which 229 cases had been responded to by WCB as at week ending December 30th, 1988.

7. This is a holding category for those cases which were adjourned or recessed at hearing by the hearing panel. There is a total of 7 "F-on hold" cases in which 3 recessed cases are already counted in the "RECESSED" category.
8. 60 of these cases have been sorted by TCO.

ANALYSE DE LA CHARGE DE TRAVAIL HEBDOMADAIRE

Au 30 Decembre 1988

Notes explicatives:

1. Il y a 42 dossiers que le BCUJ considère prêts pour l'audience mais pour lesquels le Service d'inscription n'a pas encore reçu de formulaire d'achèvement.
2. Les 286 dossiers inscrits au calendrier des audiences ne comprennent pas les dossiers suivants:

Cas ayant fait l'objet d'une nouvelle convocation*

9	Janvier 1988
4	Février 1988
3	Mars 1988
1	Avril 1988
1	Mai 1988
1	Juin 1988
<hr/>	
19	TOTAL

* Ces dossiers figurent déjà dans la charge de travail au stade postérieur à l'audience sous la mention audience "en suspens" ou "terminée, en attente"

* Ces chiffres ne comprennent pas les dossiers pour lesquels une date d'audience provisoire a été fixée.

3. Ces chiffres représentent le nombre de dossiers pour lesquels le formulaire d'achèvement n'a pas encore été envoyé au traitement des données pour le traitement des nouveaux dossiers par le Service de réception.

4. Il y a 35 cas dont la description de cas porte la mention "NON".
5. Trente-cinq des 44 demandes de réexamen courantes attendent la révision du jury d'audience. Il y a de plus 5 demandes qui n'ont pas été attribuées à un jury.

6. Il y a 269 cas en attente (révision du principe de la douleur chronique par la CAT).
- * Ce nombre comprend 27 cas de douleur chronique reclassifiés "860-CP" par le Service de réception des dossiers.
- * Ce nombre ne tient pas compte des cas de douleur chronique attribués au BCUJ (7 cas) et des 10 cas déjà entendus.

On a identifié 286 cas de pension pour la douleur chronique dont 229 ont été acceptés par la CAT à la fin de la semaine terminée le 30 décembre 1988.

7. C'est une catégorie d'attente spéciale pour les cas qui ont été ajoutés ou repoussés au moment de l'audience par le jury d'audience. Il y a 7 cas "F-EN ATTENTE" dont trois de ceux qui ont été repoussés ont déjà été comptés dans la catégorie "EN SUSPENS".

8. Soixante de ces cas ont été classés par le BCUJ.

ANNEXE H

XLVII

8. ** NOMBRE TOTAL DE DOSSIERS AU STADE PRÉALABLE À L'AUDIENCE **	1 112
9. NOMBRE TOTAL DE DOSSIERS AU STADE POSTÉRIEUR À L'AUDIENCE:	
Cas attendant la décision du vice-président	
: décision finale	269
: décision provisoire	1
TOTAL PARTIEL	270
Cas dont l'audience est en attente:	
Terminée, en attente	98
En suspens	43
Évolution inconnue	3
TOTAL PARTIEL	144
** NOMBRE TOTAL DE DOSSIERS AU STADE POSTÉRIEUR À L'AUDIENCE **	414
10. NOMBRE DE DOSSIERS AU STADE POSTÉRIEUR À LA DÉCISION:	
Clartification	0
Requête de l'ombudsman	79
Réexamen (note 5)	44
Révision judiciaire	6
** NOMBRE TOTAL DE DOSSIERS AU STADE POSTÉRIEUR À LA DÉCISION **	129
NOMBRE TOTAL DE DOSSIERS AU TRIBUNAL	1 655

Au 30 décembre 1988

1. RÉCEPTION DES NOUVEAUX DOSSIERS					
	- Pas encore prêts pour le traitement par le BCJT:				
	- Dossiers en attente du traitement initial - pas d'achèvement (note 3)	70			
	- Dossiers en attente (achèvement terminé):				
	Pas prêts pour le BCJT - période d'attente	47			
	Pas prêts pour le BCJT - travailleur sans représentant	78	31		
2. RÉCEPTION - DOSSIERS EN COURS DE TRAITEMENT INITIAL:					
	Article 15	20			
	Article 21				
	Article 77				
	- Observations écrites	7			
	- En cours de traitement	32			
	- Observations écrites	0			
	- En cours de traitement	39			
	- Observations écrites	0			
	- En cours de traitement	31			
NOMBRE TOTAL DE NOUVEAUX DOSSIERS		238			
3. TRAITEMENT PAR LE BCJT:					
	Attendant une affectation à un conseiller juridique (note 8)	84			
	DC et préparation du cas en cours (note 4)	94			
	En attente au BCJT	76			
NOMBRE TOTAL DE DOSSIER AFFECTÉS AU BCJT		170			
NOMBRE TOTAL DE DOSSIERS AU STADE PRÉALABLE À L'AUDIENCE		254			
4. DOSSIERS PRÊTS POUR L'AUDIENCE:					
	Dossiers en attente d'achèvement pour inscription au calendrier				
	des audiences (note 1)				
5. INSCRIPTION AU CALENDRIER DES AUDIENCES:					
	En attente - période d'attente de deux semaines	3			
	Dossiers en cours d'inscription	149			
	Dossiers inscrits:				
	JANVIER 1988 (4 SEMAINES)	110			
	FÉVRIER 1988 (4 SEMAINES)	77			
	MARS 1988 (5 SEMAINES)	40			
	AVRIL 1988 (4 SEMAINES)	31			
	MAI 1988 (4 SEMAINES)	16			
	JUN 1988 (5 SEMAINES)	12			
NOMBRE TOTAL DE DOSSIERS INSCRITS (Note 2)		286			
NOMBRE TOTAL DE DOSSIERS AU STADE DE L'INSCRIPTION		438			
6. ** NOMBRE TOTAL DE DOSSIERS ACTIFS AU STADE PRÉALABLE À L'AUDIENCE **		972			
7. DOSSIERS EN ATTENTE D'AUDIENCE (Note 6)					
	Dossiers impossibles à inscrire au calendrier	113			
	Dossiers relatifs aux pensions - non révisés/reclassifiés	1			
	Dossiers traités/ajournés avant/pendant l'audience (note 7)	4			
	Dossiers inactifs	22			
		410			

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

TROISIÈME RAPPORT

ANNEXE H

ANALYSE DE LA CHARGE DE TRAVAIL HEBDOMADAIRE

PROFIL DES REPRÉSENTANTS DES EMPLOYEURS*

Type de représentation	Nombre de cas	Pourcentage du total
Sans représentant	1 274	44,1
Personnel de l'entreprise	402	1,9
Avocat	467	16,2
Autre	649	22,5
Bureau des conseillers du patronat	95	3,3
Député provincial	0	0
Total des cas traités en audience	2 887	100,0

PROFIL DES REPRÉSENTANTS DES TRAVAILLEURS*

Type de représentation	Nombre de cas	Pourcentage du total
Syndicat	531	18,4
Sans représentant	492	17,0
Avocat	660	22,9
Autre	474	16,4
Bureau des conseillers des travailleurs	605	21,0
Député provincial	125	4,3
Total des cas traités en audience	2 887	100,0

* Renseignements fournis par les décisions rendues par le Tribunal.

Dans le Deuxième rapport, les renseignements avaient été recueillis dans les dossiers au stade de la réception. L'expérience nous a prouvé que les types de représentation peuvent différer en cours de procédures et que les renseignements recueillis au début peuvent s'avérer inexacts et donner une fausse indication du type de représentation lors de l'audience.

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL
TROISIÈME RAPPORT
ANNEXE G
PROFIL DES REPRÉSENTANTS

RAPPORT D'ÉCART

Pour la période de 12 mois terminée

le 31 décembre 1988

(en milliers de dollars)

Budget annuel 1987-1988	Dépenses réelles 1987-1988	\$	ÉCART %
3 881,8	4 143,6	-261,8	-6,7
Salaires et traitements			
577,3	339,0	238,8	41,3
Avantages sociaux			
546,0	394,7	151,3	27,7
Transports et communications			
3 009,6	2 319,6	690,0	22,9
Services			
213,0	181,9	31,1	14,6
Fournitures et matériel			
8 228,2	7 378,9	849,3	10,3
Dépenses totales de fonctionnement			
1 650,0	1 549,6	100,4	6,1
Dépenses d'immobilisation			
9 878,2	8 928,5	949,7	9,6
Dépenses totales			

XLIII

3690 DÉPLACEMENTS - PROGRAMMES DE RAYONNEMENT	25,0	3,6
3720 DÉPLACEMENTS - AUTRES	2,0	1,3
3721 DÉPLACEMENTS - PRÉSIDENT, VICE-PRÉSIDENTS ET REPRÉSENTANTS	24,0	58,7
TOTAL, TRANSPORTS ET COMMUNICATIONS	546,0	394,7
SERVICES		
4120 RELATIONS PUBLIQUES	10,0	5,0
4130 PUBLICITÉ - EMPLOIS	2,0	15,0
4210 LOCATION - MATÉRIEL INFORMATIQUE	40,0	55,1
4220 LOCATION - MATÉRIEL DE BUREAU	7,5	39,0
4230 LOCATION - FOURNITURES DE BUREAU	0,0	4,1
4240 LOCATION - PHOTOCOPIEUR	90,0	90,6
4260 LOCATION - BUREAUX	643,1	738,1
4261 LOCATION - SALLES D'AUDIENCE	25,0	19,4
4270 LOCATION - AUTRES	8,0	0,7
4310 TRAITEMENT DES DONNÉES	10,0	62,2
4320 ASSURANCE	5,0	0,0
4340 RÉCEPTIONS - HOSPITALITÉ	15,0	25,7
4341 RÉCEPTIONS - LOCATION	0,0	0,0
4350 INDENNISATION DES TÉMOINS	50,0	29,9
4351 SIGNIFICATION DES BREFS ET ASSIGNATIONS	5,0	7,6
4360 INDENNITÉS JOURNALIÈRES - VICE-PRÉS. ET REPRÉS. À TEMPS PARTIEL	750,0	471,1
4410 CONSEILLERS - SERVICES DE GESTION	50,0	9,5
4420 CONSEILLERS - CONCEPTION DE SYSTÈMES	0,0	0,0
4430 SERVICES DE STÉNOGRAPHIE JUDICIAIRE	180,0	110,3
4431 CONSEILLERS - SERVICES JURIDIQUES	80,0	12,8
4435 TRANSCRIPTION	100,0	44,2
4440 INDENNITÉS JOURNALIÈRES DES MÉDECINS, PROVISIONS/RAPPORTS	400,0	206,2
4460 SERVICES DE LA RECHERCHE	10,0	0,3
4470 IMPRESSION DES DÉCISIONS, BULLETINS ET BROCHURES	180,0	177,4
4520 RÉPARATIONS ET ENTRETIEN - FOURNITURES ET MATÉRIEL DE BUREAU	8,0	24,9
4710 AUTRES - Y COMPRIS COTISATIONS	12,0	52,9
4711 SERVICES DE TRADUCTION ET D'INTERPRÉTATION	75,0	54,8
4712 PERFECTIONNEMENT PROFESSIONNEL - DROITS DE SCOLARITÉ	64,0	31,1
4713 SERVICES DE TRADUCTION - EN FRANÇAIS	90,0	31,5
4990 MINISTÈRE DU TRAVAIL	100,0	0,0
TOTAL, SERVICES	3 009,6	2 319,6
FOURNITURES ET MATÉRIEL		
5090 PROJECTEURS, CAMÉRAS, ÉCRANS	3,0	0,5
5110 MATÉRIEL INFORMATIQUE ET LOGICIELS	0,0	1,0
5120 AMÉUBLEMENT ET MATÉRIEL DE BUREAU	50,0	5,5
5130 MACHINES DE BUREAU	10,0	1,5
5170 FOURNITURES DE BUREAU	100,0	127,0
5720 LIVRES, PUBLICATIONS ET RAPPORTS	50,0	46,4
TOTAL, FOURNITURES ET MATÉRIEL	213,0	181,9
TOTAL, DÉPENSES DE FONCTIONNEMENT	8 228,2	7 378,9
DÉPENSES D'IMMOBILISATION	1 650,0	1 549,6
DÉPENSES TOTALES	9 878,2	8 928,5

ÉTAT DÉTAILLÉ DES DÉPENSES

Pour la période de 12 mois terminée le 31 mars 1988

(en milliers de dollars)

Budget
annuel
1987/88

Dépenses
réelles
1987/88

SALAIRES ET TRAITEMENTS

1310 SALAIRES ET TRAITEMENTS - HEURES NORMALES
1320 SALAIRES ET TRAITEMENTS - HEURES SUPPLÉMENTAIRES
1325 SALAIRES ET TRAITEMENTS - TRAVAILLEURS CONTRACTUELS
1510 AIDE TEMPORAIRE - GOUVERNEMENT
1520 AIDE TEMPORAIRE - ORGANISMES EXTERNES

TOTAL, SALAIRES ET TRAITEMENTS

3 881,8

4 143,6

AVANTAGES SOCIAUX

2110 RÉGIME DE PENSIONS DU CANADA
2130 ASSURANCE-CHÔMAGE
2220 CAISSE DE RETRAITE DES FONCTIONNAIRES
2230 FOND DE RAJUSTEMENT, CAISSE DE RETRAITE DES FONCTIONNAIRES
2260 OBLIGATIONS FLOTANTES, CAISSE DE RETRAITE DES FONCTIONNAIRES
2310 RÉGIME D'ASSURANCE-MALADIE DE L'ONTARIO
2320 RÉGIME D'ASSURANCE-MALADIE COMPLÉMENTAIRE
2330 RÉGIME DE PROTECTION DU REVENU
2340 ASSURANCE-VIE COLLECTIVE
2350 ASSURANCE DENTAIRE
2410 INDENNISATION DES ACCIDENTS DU TRAVAIL
2520 PRESTATIONS SUPPLÉMENTAIRES DE MATERNITÉ
2990 TRANSFERT DES PRESTATIONS (16,58 %)

TOTAL, AVANTAGES SOCIAUX

577,8

339,0

TRANSPORTS ET COMMUNICATIONS

3110 MESSAGERIE ET LIVRAISON
3111 INTÉURBAINS
3112 TÉLÉPHONE : SERVICE, MATÉRIEL
3210 AFFRANCHISSEMENT POSTAL
3410 FRAIS DE RÉINSTALLATION D'EMPLOYÉS
3610 DÉPLACEMENTS - REPAS ET HÉBERGEMENT
3620 DÉPLACEMENTS - AVION
3630 DÉPLACEMENTS - TRAIN
3640 DÉPLACEMENTS - AUTOMOBILE
3660 DÉPLACEMENTS - CONFÉRENCES ET COLLOQUES
3680 DÉPLACEMENTS - PARTICIPATION AUX AUDIENCES

25,0
15,0
15,0
40,8
59,3
0,0
180,0
0,0
0,0
29,6
1,3
0,0
15,0
150,0

51,6
16,1
40,8
59,3
0,0
51,4
29,6
1,3
21,3
20,0
39,6

RAPPORT D'ECART

Pour la période de neuf mois terminée

le 31 décembre 1988

(en milliers de dollars)

	Budget annuel 1987-1988	Dépenses réelles 1987-1988	\$	ECART %
Salaires et traitements	3 517,5	3 390,0	127,5	3,6
Avantages sociaux	465,8	343,8	122,0	26,2
Transports et communications	305,3	264,3	41,0	13,4
Services	1 899,8	1 853,2	46,6	2,5
Fournitures et matériel	97,5	126,8	-29,3	-30,0
Dépenses totales de fonctionnement	6 285,8	5 978,0	307,9	4,9
Dépenses d'immobilisation	337,5	307,6	29,9	8,9
Dépenses totales	6 623,3	6 285,6	337,8	5,1

ANNEXE F

3660 DÉPLACEMENTS - CONFÉRENCES ET COLLOQUES
3680 DÉPLACEMENTS - PARTICIPATION AUX AUDIENCES
3690 DÉPLACEMENTS - PROGRAMMES DE RAYONNEMENT
3720 DÉPLACEMENTS - AUTRES
3721 DÉPLACEMENTS - PRÉSIDENT, VICE-PRÉSIDENT ET REPRÉSENTANTS

TOTAL, TRANSPORTS ET COMMUNICATIONS

18,8 19,3
26,3 28,7
4,2 4,2
0,0 1,2
41,3 30,3

305,3

264,3

SERVICES

4120 RELATIONS PUBLIQUES
4130 PUBLICITÉ - EMPLOIS
4210 LOCATION - MATÉRIEL INFORMATIQUE
4220 LOCATION - MATÉRIEL DE BUREAU
4230 LOCATION - FOURNITURES DE BUREAU
4240 LOCATION - PHOTOCOPIEUR

4260 LOCATION - BUREAUX
4261 LOCATION - SALLES D'AUDIENCE
4270 LOCATION - AUTRES
4310 TRAITEMENT DES DONNÉES
4320 ASSURANCE

4340 RÉCEPTIONS - HOSPITALITÉ
4341 RÉCEPTIONS - LOCATION
4350 INDEMNISATION DES TÉMOINS
4351 SIGNIFICATION DES BREFS ET ASSIGNATIONS

4360 FORAITS QUOTIDIENS - VICE-PRÉS. ET REPRÉS. À TEMPS PARTIEL
4410 CONSEILLERS - SERVICES DE GESTION
4420 CONSEILLERS - CONCEPTION DE SYSTÈMES
4430 SERVICES DE STÉNOGRAPHIE JUDICIAIRE
4431 CONSEILLERS - SERVICES JURIDIQUES

4435 TRANSCRIPTION
4440 FORAITS QUOTIDIENS DES MÉDECINS, PROVISIONS/RAPPORTS
4460 SERVICES DE LA RECHERCHE
4470 IMPRESSION DES DÉCISIONS, BULLETINS ET BROCHURES

4470 RÉPARATIONS ET ENTRETIEN - FOURNITURES ET MATÉRIEL DE BUREAU
4710 AUTRES - Y COMPRIS COTISATIONS
4711 SERVICES DE TRADUCTION ET D'INTERPRÉTATION
4712 PERFECTIONNEMENT PROFESSIONNEL - DROITS DE SCOLARITÉ

4713 SERVICES DE TRADUCTION - EN FRANÇAIS
4714 AUTRES COÛTS DES SERVICES EN FRANÇAIS

TOTAL, SERVICES

1 899,8

1 853,2

FOURNITURES ET MATÉRIEL

5090 PROJECTEURS, CAMÉRAS, ÉCRANS
5110 MATÉRIEL INFORMATIQUE ET LOGICIELS
5120 AMEUBLEMENT ET MATÉRIEL DE BUREAU
5130 MACHINES DE BUREAU
5710 FOURNITURES DE BUREAU
5720 LIVRES, PUBLICATIONS ET RAPPORTS

TOTAL, FOURNITURES ET MATÉRIEL

TOTAL, DÉPENSES DE FONCTIONNEMENT

DÉPENSES D'IMMOBILISATION

DÉPENSES TOTALES

6 623,3

337,5

6 285,8

5,978,0

97,5

30,0

37,5

89,6

37,1

ÉTAT DÉTAILLÉ DES DÉPENSES

Pour la période de neuf mois finissant le 31 décembre 1988

(en milliers de dollars)

BUDGET	à 12/88	DÉPENSES	à 04/88	RÉELLES
SALAIRES ET TRAITEMENTS				
1310 SALAIRES ET TRAITEMENTS - HEURES NORMALES	3 015,0	2 967,0	37,5	40,5
1320 SALAIRES ET TRAITEMENTS - HEURES SUPPLÉMENTAIRES			360,0	208,5
1325 SALAIRES ET TRAITEMENTS - TRAVAILLEURS CONTRACTUELS			52,5	37,2
1510 AIDE TEMPORAIRE - GOUVERNEMENT			52,5	136,8
1520 AIDE TEMPORAIRE - ORGANISMES EXTERNES				
TOTAL, SALAIRES ET TRAITEMENTS				
	3 517,5	3 390,0		
AVANTAGES SOCIAUX				
2110 RÉGIME DE PENSIONS DU CANADA	0,0	38,1	0,0	
2130 ASSURANCE-CHÔMAGE	0,0	75,0	0,0	
2220 CAISSE DE RETRAITE DES FONCTIONNAIRES	0,0	76,1	0,0	
2230 FONDS DE RAJUSTEMENT, CAISSE DE RETRAITE DES FONCTIONNAIRES	0,0	15,7	0,0	
2260 OBLIGATIONS FLOTANTES, CAISSE DE RETRAITE DES FONCTIONNAIRES	0,0	0,0	0,0	
2310 RÉGIME D'ASSURANCE-MALADIE DE L'ONTARIO	0,0	36,3	0,0	
2320 RÉGIME D'ASSURANCE-MALADIE COMPLÉMENTAIRE	0,0	20,1	0,0	
2330 RÉGIME DE PROTECTION DU REVENU	0,0	15,6	0,0	
2340 ASSURANCE-VIE COLLECTIVE	0,0	7,0	0,0	
2350 ASSURANCE DENTAIRE	0,0	20,3	0,0	
2410 INDENNISATION DES ACCIDENTS DU TRAVAIL	0,0	1,1	0,0	
2520 PRESTATIONS SUPPLÉMENTAIRES DE MATERNITÉ	0,0	38,3	0,0	
2990 TRANSFERT DES PRESTATIONS (16,58 %)	0,0	0,0	0,0	
TOTAL, AVANTAGES SOCIAUX				
	465,8	343,8		
TRANSPORTS ET COMMUNICATIONS				
3110 MESSAGERIE ET LIVRAISON	33,8	25,1	11,3	10,1
3111 INTERURBAINS				
3112 TÉLÉPHONE, SERVICE, MATÉRIEL	45,0	37,2		
3210 AFFRANCHISSEMENT POSTAL	40,5	31,8		
3410 FRAIS DE RÉINSTALLATIONS D'EMPLOYES	7,5	0,0		
3610 DÉPLACEMENTS - REPAS ET HÉBERGEMENT	75,0	35,0		
3620 DÉPLACEMENTS - AVION	0,0	25,7		
3630 DÉPLACEMENTS - TRAIN	0,0	0,8		
3640 DÉPLACEMENTS - AUTOMOBILE	0,0	15,0		

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

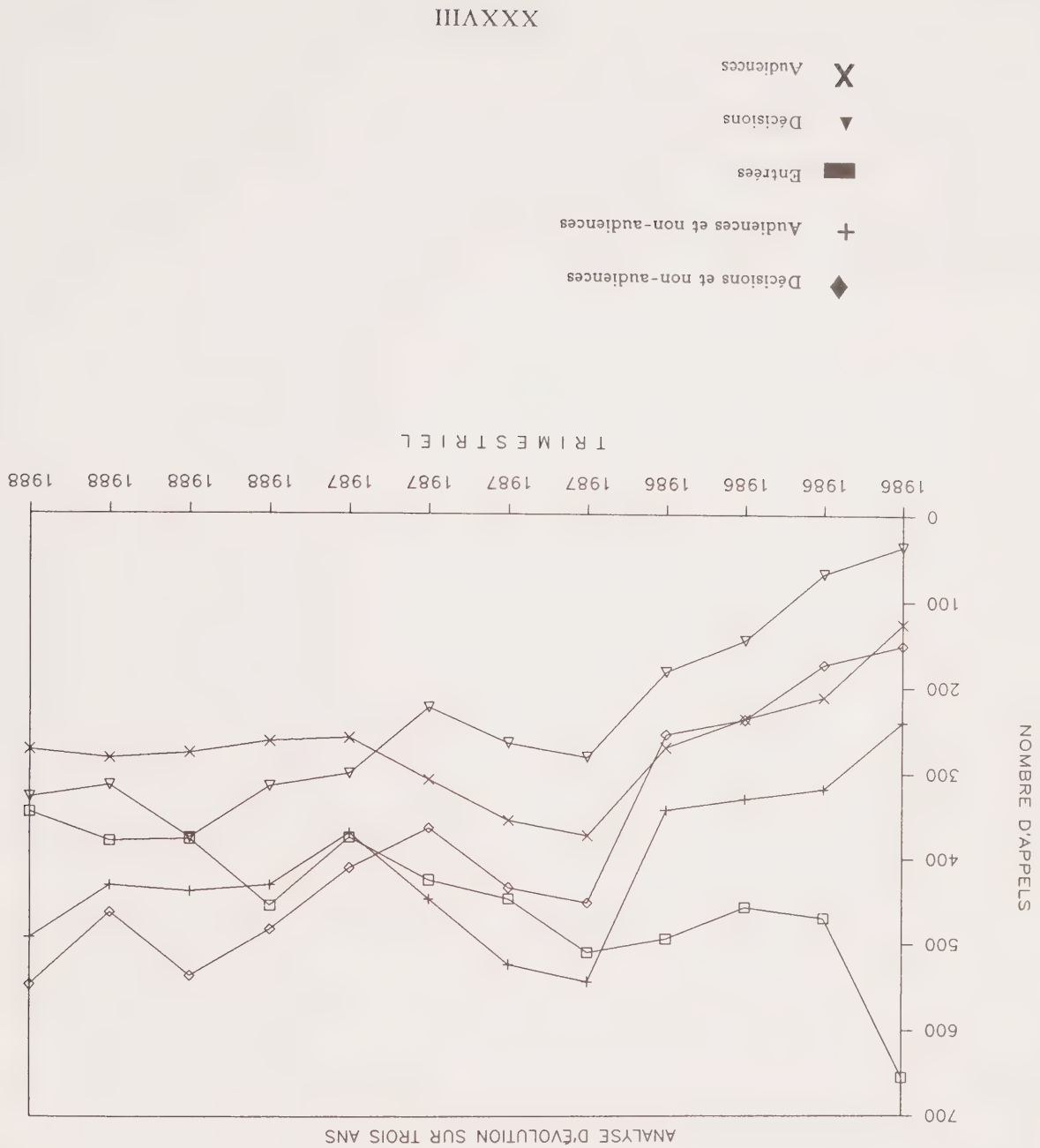
TROISIÈME RAPPORT

ANNEXE F

DÉTAILS BUDGÉTAIRES

1. État des dépenses - 9 mois
2. Rapport d'écart - 9 mois
3. État des dépenses - 12 mois
4. Rapport d'écart - 12 mois

GRAPHIQUE DE L'ÉVOLUTION DES DOSSIERS DE L'ENTRÉE À LA SORTIE



RÉSUMÉ DE LA CHARGE DE TRAVAIL EN COURS

à la fin de la période terminée

le 30 décembre 1988

Entrée de dossiers en 39 mois	6 439
Sortie de dossiers en 39 mois	4 515
Charge de travail en cours à la fin de la période couverte:	
au stade préalable à l'audience	1 510
au stade postérieur à l'audience	414
charge de travail totale en cours	<u>1 924</u>

CHARGE DE TRAVAIL MENSUELLE

A la fin de l'exercice précédent le 30 sept.	DOSSIERS - STADE PRÉALABLE: *		DOSSIERS - STADE POSTÉRIEUR:		En suspens		Complets mais en attente		Décision au stade de la rédaction		NOMBRE TOTAL DE DOSSIERS AU STADE POSTÉRIEUR À L'AUDIENCE		CHARGE DE TRAVAIL TOTALE
	1987	1988	1987	1988	1987	1988	1987	1988	1987	1988	1987	1988	
12/30	1988	1988	1 510	1 539	68	165	525	758	771	762	733	675	2 389
11/30	1987	1987	1 651	1 643	63	177	531	771	771	762	733	675	2 416
10/30	1987	1987	1 652	1 643	64	172	526	762	762	733	675	661	2 405
12/31	1987	1987	1 688	1 670	58	195	468	724	724	733	675	661	2 385
01/29	1988	1988	1 706	1 688	53	172	445	724	724	733	675	661	2 416
02/26	1988	1988	1 695	1 670	54	163	416	724	724	733	675	661	2 381
04/01	1988	1988	1 695	1 670	39	124	355	518	518	573	615	615	2 349
05/27	1988	1988	1 657	1 648	36	107	340	516	516	573	615	615	2 285
07/01	1988	1988	1 657	1 648	39	107	340	516	516	573	615	615	2 268
08/26	1988	1988	1 657	1 648	39	107	340	516	516	573	615	615	2 166
09/30	1988	1988	1 657	1 648	49	100	333	482	482	573	615	615	2 177
10/28	1988	1988	1 591	1 591	46	106	321	473	473	573	615	615	2 143
11/25	1988	1988	1 591	1 591	46	106	321	473	473	573	615	615	2 064
12/30	1988	1988	1 591	1 591	46	106	321	473	473	573	615	615	2 016
1988	1988	1988	1 591	1 591	46	106	321	473	473	573	615	615	1 924

DOSSIERS - STADE PRÉALABLE: *

DOSSIERS - STADE POSTÉRIEUR:

En suspens

Decision au stade de la rédaction

NOMBRE TOTAL DE DOSSIERS AU ST

POSTÉRIEUR À L'AUDIENCE

CHARGE DE TRAVAIL TOTALE

NOTE:

* Ces chiffres comprennent les cas de pension pour douleur chronique

PRODUCTION MENSUELLE

PROGRESSION MENSUELLE

ENTRÉE:		Nombre de dossiers															
Exercice	Total																
		10-87	11-87	12-87	01-88	02-88	03-88	04-88	05-88	06-88	07-88	08-88	09-88	10-88	11-88	12-88	Total
		Précédent															
		**															
		à ce jour															
		15 mois															
		à partir															
		d'oct. 1985															
		Cumul.															
		39 mois															
		Total															
		1 876															
		125															
		105															
		145															
		153															
		139															
		163															
		108															
		138															
		131															
		152															
		94															
		133															
		112															
		91															
		142															
		1 931															
		6 439															
		%															

Dossiers retirés	286	13	18	15	19	17	37	19	23	21	11	11	34	18	30	25	311	744	16,5%
Dossiers ne relevant pas de la compétence du Tribunal	78	1	5	1	0	5	7	2	0	16	6	9	3	5	3	2	65	305	6,8%
Autres	11	1	0	0	1	2	7	8	7	3	6	2	2	12	8	42	101	116	2,6%
Dossiers inactifs	80	9	2	4	3	3	23	0	1	5	4	1	6	16	4	0	81	161	3,6%
Dossiers réglés	51	9	5	13	9	7	10	14	6	16	12	9	7	4	8	5	134	190	4,2%
Dossiers au stade postérieur à la décision	45	0	4	11	6	4	8	3	10	8	7	10	9	15	11	12	118	163	3,6%
Règlement par jury-conseil	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0,1%
Total, règlement sans audience A	553	33	34	44	38	38	92	46	47	69	46	42	61	70	64	86	810	1 682	37,3%
Décisions définitives rendues B	952	70	92	138	82	112	121	108	133	134	115	96	103	98	80	149	1 631	2 833	62,7%
NOMBRE TOTAL DES DOSSIERS RÉGLÉS (A+B)	1 505	103	126	182	120	150	213	154	180	203	161	138	164	168	144	235	2 441	4 515	100,0%

Notes:

* Avant les ajustements annuels aux appels reçus - 23 cas pour la première période visée et 22 cas pour la seconde période visée

** Les colonnes n'indiquent que les ajouts mensuels

a) Ces règlements portent sur les requêtes de réexamen, les demandes de l'ombudsman et les requêtes de révision judiciaire

Saut les décisions provisoires et les décisions sur les requêtes de réexamen

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

TROISIÈME RAPPORT

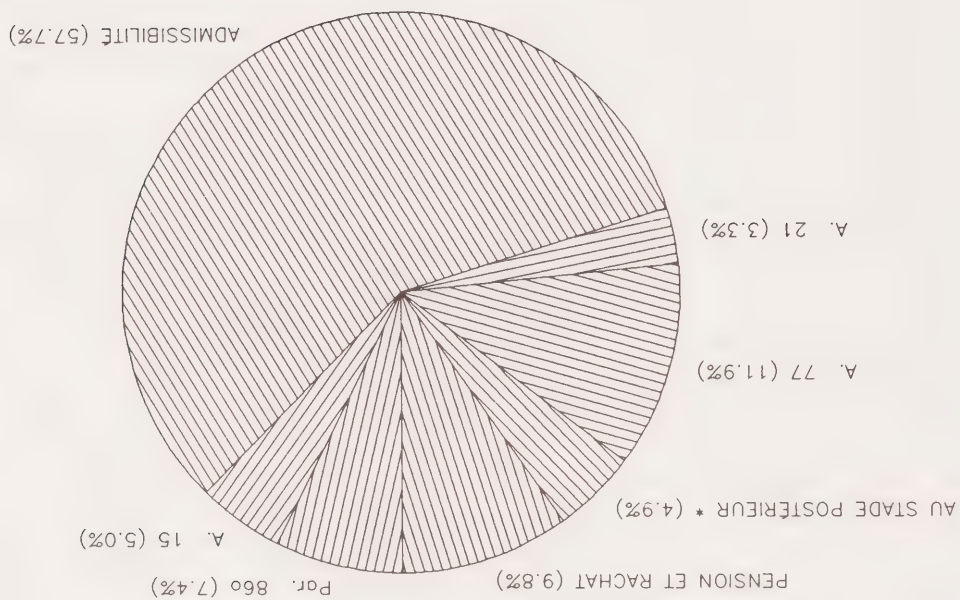
ANNEXE E

STATISTIQUES DE PRODUCTION

1. Production mensuelle
2. Charge de travail mensuelle
3. Sommaire de la charge de travail en cours
4. Evolution des entrées et des sorties

RÉPARTITION DES DOSSIERS PAR CATÉGORIE D'APPELS

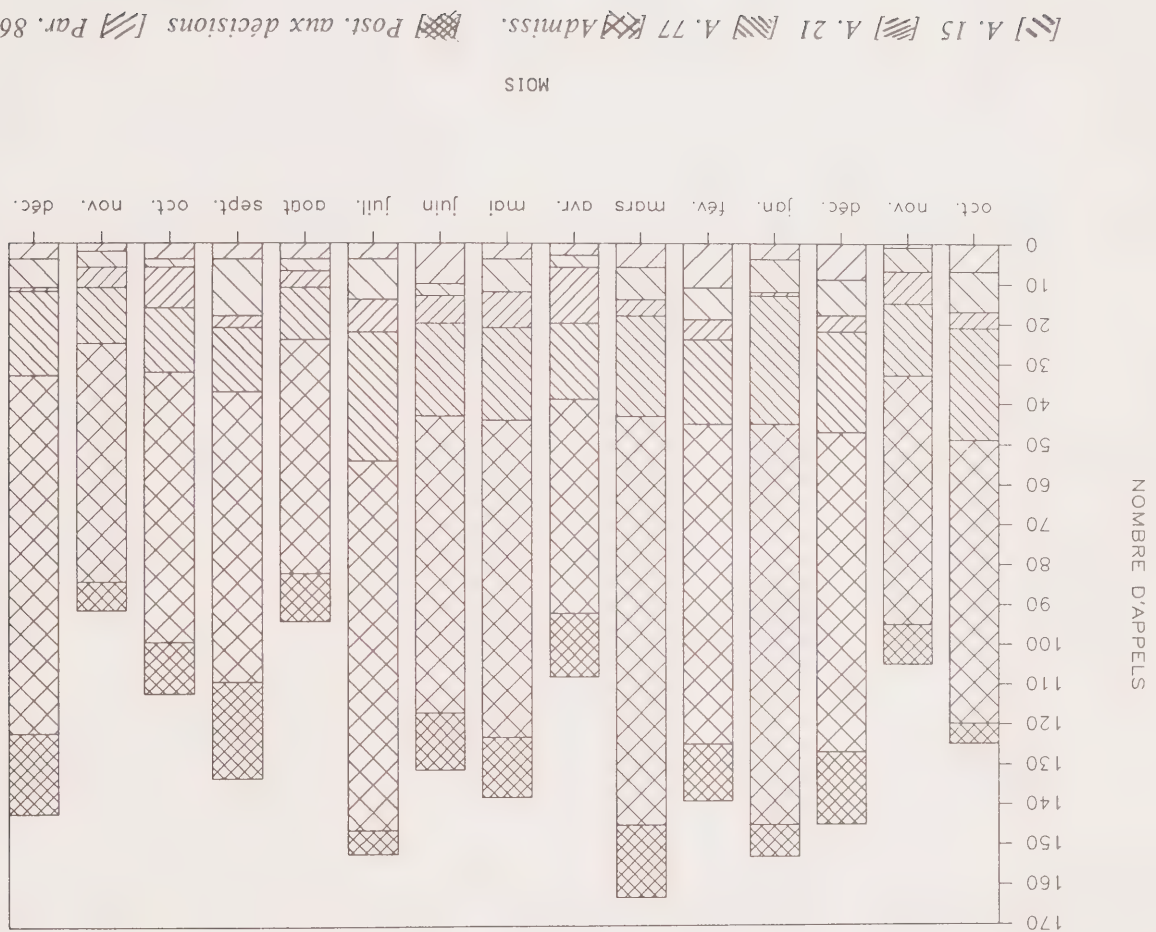
Période de 39 mois



*Le stade postérieur aux décisions comprend les requêtes de réexamen, les requêtes de l'ombudsman et les cas de révision judiciaire.

RÉPARTITION DES DOSSIERS PAR CATÉGORIE D'APPELS

Octobre 1987 à décembre 1988



RÉPARTITION MENSUELLE DES DOSSIERS REÇUS

DESCRIPTION	Total	Exercice	* 10-87	11-87	12-87	01-88	02-88	03-88	04-88	05-88	06-88	07-88	08-88	09-88	10-88	11-88	12-88	Total	39 mois	Période à partir	%
																			actuelle d'octobre	1985	

APPELS PAR CATEGORIE:**

Total	1 876	125	105	145	153	139	163	108	138	131	152	94	133	112	91	142	1 931	6 439	100,0%
Paragraphe B60	120	7	1	9	4	11	6	3	4	10	4	4	4	4	2	2	77	484	7,5%
Article 15	97	10	6	9	8	8	3	8	3	10	3	14	2	4	7	7	103	322	5,0%
Article 21	79	4	8	4	1	5	4	14	9	7	8	4	3	10	5	1	87	210	3,3%
Article 77	317	28	18	25	32	21	25	19	23	23	32	13	16	16	14	27	326	764	11,9%
Pensions	192	8	6	8	9	3	4	1	0	2	0	0	2	0	1	0	44	588	9,1%
Rachat	15	2	2	4	1	2	0	1	0	4	0	1	6	0	0	2	25	43	0,7%
Evaluation de l'employeur	29	0	0	2	1	1	3	0	0	0	0	1	1	2	1	1	14	67	1,0%
Revision judiciaire	7	0	0	0	0	0	1	0	2	1	0	0	0	0	0	0	4	13	0,2%
Requête de l'ombudsman	48	0	7	11	0	6	10	7	8	12	4	5	19	4	2	2	103	156	2,4%
Reexamen	48	5	3	7	8	8	7	9	5	3	2	7	5	9	5	12	93	148	2,3%
Non-compétence	54	3	0	0	2	1	5	0	3	3	2	0	2	0	0	0	22	234	3,6%
Admissibilité	877	58	54	66	87	72	90	51	76	65	90	56	61	65	57	85	1 033	3 417	53,1%

Paragraphe B60 - Requetes d'autorisation d'appel
Article 15 - Requete en vue d'une decision sur le droit d'intenter une action civile
Article 21 - Requete d'un travailleur s'opposant a un examen medical exige par son employeur
Article 77 - Appel des decisions de la CAT concernant l'accès aux dossiers des travailleurs
Pension - Appel relatif a une pension pour invalidité partielle a caractère permanent
Rachat - Appel des décisions de la CAT sur une requête d'un travailleur pour le paiement d'une somme forfaitaire au lieu de versements
Evaluation de l'employeur - Appel par l'employeur des décisions d'évaluation de la CAT
Requête de l'ombudsman - Requête a la cour divisionnaire pour demander la révision d'une décision du Tribunal
Reexamen - Requête au Tribunal pour réexaminer une décision du Tribunal
Non-compétence - Dossier considéré, a une étape préliminaire, comme n'étant pas de la compétence du Tribunal
Admissibilité et autres - Appel des décisions de la CAT sur l'admissibilité aux indemnités et sur le montant des pensions et questions diverses

** A la date de réception des dossiers de la CAT

* Avant les ajustements annuels - 23 cas pour la première période visée et 22 cas pour la seconde période visée

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

TROISIÈME RAPPORT

ANNEXE D

STATISTIQUES SUR LA RÉCEPTION DES NOUVEAUX DOSSIERS

1. Répartition mensuelle des dossiers reçus
2. Répartition des dossiers selon les catégories d'appels
3. Répartition des dossiers selon les catégories d'appels
(période de 39 mois)

décisions de la Commission et les décisions rendues par le Tribunal en appel des décisions originales de cette dernière n'auront pas toujours la même conclusion, qu'il s'agisse des questions de fait, des questions de droit ou des questions médicales.

8. Les perspectives de confusion tenant aux circonstances exposées aux paragraphes 6 et 7

sont très nettes, de même que les perspectives de contestation en justice, sans parler d'une nouvelle période de retard et d'incertitude. Vu la complexité et la difficulté des questions d'indemnisation des cas de pension pour cause de douleur chronique et vu le retard dont souffrent déjà les cas en suspens, le Tribunal estime qu'il est essentiel que la formulation des règles de droit et des principes directeurs en la matière suive son cours de la manière la plus simple possible. Une telle condition est de première importance, non seulement du point de vue des parties, mais aussi du point de vue du système d'indemnisation des accidents du travail.

Par tous ces motifs, le Tribunal conclut qu'il est nécessaire d'adopter, à l'égard des appels en matière de pension, une procédure par laquelle il ne sera saisi des questions de pension pour cause de douleur chronique qu'après que la Commission aura eu l'occasion de les examiner à la lumière de son nouveau principe directeur. La directive de procédure ci-dessus a été établie à cet effet.

Fait à Toronto, le 23 octobre 1987

Tribunal d'appel des accidents du travail

S.R. Ellis, Président

d'anciens dossiers de pension pour cause de douleur chronique tient uniquement à des événements fortuits particuliers qui ont conduit à l'adoption du nouveau principe directeur de la Commission.

2. Si le Tribunal entend d'entendre ces cas sans qu'il y ait eu une décision en première instance de la Commission sur les questions de pension pour cause de douleur chronique, l'application du nouveau principe directeur à ces décisions sera décidée dans un processus ou une seule décision serait possible (sans compter le réexamen que prévoit le paragraphe 86n). Vu la difficulté, la nouveauté et la complexité des questions de cette nature, pareil processus n'est probablement pas suffisant. Cela est vrai du point de vue du système comme du point de vue des parties.

3. En matière de douleur chronique, comme en d'autres matières, il est particulièrement difficile, en l'absence de l'apport en première instance de la Commission, de régler les questions de traitement possible, de disponibilité des moyens de réadaptation professionnelle et d'admissibilité aux suppléments. Abstraction faite de la compétence, il s'agit là de questions qui, de par leur nature, requièrent l'instruction en première instance de la Commission et que, par ailleurs, le Tribunal a pour règle de renvoyer à la Commission pour instruction en première instance, chaque fois qu'elles se posent en premier lieu devant le Tribunal à la suite d'une conclusion à l'admissibilité aux prestations.

4. Pour ce qui est de l'évaluation des prestations de pension pour cause de douleur chronique, il est probable que, par les motifs exposés en détail dans la *Décision n° 915*, le jury d'audience du Tribunal devra s'appuyer sur une réévaluation des pensions de la part des médecins de la Commission, pour être en mesure de tirer sa propre conclusion. Par ailleurs, en vue d'éviter l'émergence de deux systèmes d'évaluation des pensions en matière de douleur chronique, l'un appliqué par la Commission et l'autre par le Tribunal, il est vraiment essentiel que le Tribunal soit en mesure de réexaminer l'évaluation faite par la Commission dans les cas d'espèce, plutôt que de procéder à sa propre évaluation. Il est vrai que dans la *Décision n° 915*, le Tribunal a effectué lui-même l'évaluation, mais il l'a fait à la lumière du témoignage des médecins de la Commission et à un moment où la Commission n'avait aucun principe directeur en matière d'évaluation en cas de douleur chronique. Il s'ensuit que quand bien même le Tribunal entreprendrait d'entendre les cas en suspens sans attendre le réexamen de la Commission, il est à peu près certain que les jurys d'audience renverraient régulièrement, la question de l'évaluation tout au moins, à la Commission pour décision en première instance.

5. Il appert donc, par les motifs exposés aux paragraphes 3 et 4 ci-dessus, que ces questions très importantes seront presque certainement renvoyées à la Commission dans presque tous les cas de pension pour cause de douleur chronique, quelle que soit la suite réservée aux questions de procédure.

6. La décision prise par la Commission de réexaminer elle-même l'application éventuelle de son nouveau principe directeur sur la douleur chronique aux cas de pension actuellement en appel devant le Tribunal fait que, si ce dernier suit la voie normale, il entendra les appels interjetés contre des décisions originales de la Commission, tout en sachant qu'elle s'apprête à en rendre de nouvelles. Les décisions rendues par le Tribunal et les nouvelles décisions de la Commission risquent de paraître en même temps. Les nouvelles décisions de la Commission seront susceptibles d'appel devant le Tribunal, et il est probable que la Commission les considérera comme se substituant aux décisions originales. Dans ce contexte, le statut de la décision rendue par le Tribunal en appel de la décision originale de la Commission est pour le moins incertain.

7. Les choses étant ce qu'elles sont, en particulier en cette première étape de la formulation des concepts touchant la douleur chronique, on peut raisonnablement prévoir que les nouvelles

chronique dans ces cas à compter du 3 juillet, en attendant que la Commission puisse en décider à la lumière de son nouveau principe directeur.

L'argument contraire est tout aussi évident. La question de savoir si la procédure relative à un litige donné a été épuisée doit être jugée à la date de la décision portée en appel. Si toutes les procédures ont été épuisées et que la décision est définitive à la date à laquelle elle est rendue, le droit d'interjeter appel en application de l'alinéa 860(1) s'applique, et la création subséquente de procédures applicables par la Commission n'a aucun effet.

Le Tribunal a été également informé de l'intention du personnel de la Commission de faire réexaminer par cette dernière tous les dossiers de pension où il est question de douleur chronique, en appel devant le Tribunal, pour instruire et juger cette dernière question par l'application du principe directeur de la Commission en la matière. La Commission a demandé au Tribunal de lui fournir la liste de tous ces dossiers à cet effet. Le Tribunal a été aussi informé que dans le réexamen de ces dossiers, la Commission instruirait également toutes les questions connexes comme l'admissibilité aux suppléments prévus aux paragraphes 45(5) et 45(7), la disponibilité des programmes de soins médicaux ou de réadaptation professionnelle, etc.

Pour éviter tout malentendu, il y a lieu de noter que la Commission ne prévoit pas donner à son nouveau principe directeur un effet rétroactif à la période antérieure au 3 juillet 1987. Elle n'examinera pas l'admissibilité aux prestations portant sur quelque période que ce soit, antérieure à cette date. La question de la rétroactivité des prestations de pension pour cause de douleur chronique avait été mise de côté dans la *Décision n° 915* en attendant un complément d'argumentation à ce sujet. Cette argumentation a été entendue, et le jury qui a rendu la *Décision n° 915* se penche en ce moment sur cette question.

Tous les faits ci-dessus, y compris l'expérience que le Tribunal a tirée de l'instruction des appels de pension mettant en jeu des questions relatives à la douleur chronique, lui ont permis d'identifier un certain nombre de problèmes qui se poseraient au cas où il rendrait des décisions en la matière avant que la Commission n'ait eu l'occasion de considérer l'application de son nouveau principe directeur en ce domaine. Ces sujets de préoccupation sont énumérés ci-dessous. Il convient de noter que la question de compétence n'y figure pas. Le Tribunal a toujours présumé qu'il a la compétence requise pour entendre l'appel porté contre toute décision définitive de la Commission, une fois que toutes les procédures en vigueur à ce moment-là ont été épuisées, pour ce qui est des matières visées aux alinéas 86g(1)(b) et c). Tant que cette interprétation de la compétence du Tribunal n'aura pas été contestée dans un cas d'espèce, il estime qu'il est juste et nécessaire de fonder son action sur la présomption que son interprétation de la compétence du Tribunal est correcte.

Voici la liste des sujets de préoccupation du Tribunal:

1. Il est vrai que la substance du nouveau principe directeur sur la douleur chronique se dégagea graduellement, dans les faits, de l'application de cette politique aux cas d'espèce. Qui-directeur aux cas d'espèce aura probablement une influence déterminante sur la direction que prendra la formulation du principe directeur. Et quoi qu'on puisse penser des arguments contradictoires en matière de compétence dans les circonstances particulières de ces cas, il est indubitable qu'en règle générale, l'Assemblée législative entendait confier ce rôle premier à la Commission, et non au Tribunal. Voir la reconnaissance explicite de ce fait dans la *Décision n° 3* du Tribunal et dans le rapport provisoire du cas-type concernant les appels en matière d'évaluation des pensions. La possibilité pour le Tribunal d'assumer le rôle premier dans un grand nombre

Le nouveau principe directeur de la Commission ne fait aucune mention de la *Décision n° 915*, dont la compatibilité avec ce principe directeur n'a pas encore été mise à l'épreuve.

De toute évidence, le nouveau principe directeur de la Commission sur la douleur chronique et la *Décision n° 915* représentent tous deux un changement de direction par rapport aux politiques antérieures des régimes d'indemnisation des accidents du travail du Canada. Il est manifeste qu'ils marquent aussi le début d'un processus de formulation de politiques qui promet d'être long et difficile. Il ressort de l'analyse de la *Décision n° 915* et de la nature du nouveau principe directeur de la Commission que l'octroi de la pension aux travailleurs souffrant d'une invalidité imputable à la douleur chronique met en jeu des questions difficiles et complexes, auxquelles la réponse ne se dégagea qu'au fur et à mesure de l'application du nouveau principe directeur à différents cas d'espèce.

En juillet 1987, le Tribunal a commencé à inscrire au rôle d'audition les cas de pension qui avaient été suspendus avant la *Décision n° 915*. À la date de cette directive de procédure, des audiences ont été tenues pour un certain nombre de cas, mais aucune décision n'avait encore été rendue. L'expérience que les jurys d'audience ont tirée de ces cas a cependant servi à confirmer à quel point la douleur chronique pourrait être un facteur dans les appels en matière de pension et à convaincre davantage le Tribunal de la difficulté et de la complexité des points litigieux qu'il est appelé à régler.

C'est dans ce contexte que le Tribunal a été amené à considérer les points de procédure faisant l'objet de la *Directive de procédure n° 9*.

Motifs présidant à la directive

Au cours des trois mois qui ont suivi l'adoption, par la Commission, de son nouveau principe directeur sur la douleur chronique, le Tribunal s'est rendu compte que le personnel de la Commission s'inquiétait de ce que le rôle de cette dernière dans la formulation première de la politique d'indemnisation soit menacé, en première instance, des questions de pension pour cause de douleur chronique. Ce dernier fait s'expliquait par le nombre de décisions en matière de pension portées en appel devant le Tribunal avant l'adoption du principe directeur de la Commission (environ 500 cas). En fait, au cours d'un échange de vues entre l'avocat-conseil intermédiaire de la Commission et l'avocat-conseil du Tribunal, le personnel de la Commission a soutenu, en s'appuyant sur l'alinéa 86g(2) de la *Loi sur les accidents du travail*, qu'à compter du 3 juillet 1987, la loi interdisait au Tribunal d'entendre les questions de pension pour cause de douleur chronique que la Commission n'avait pas eu l'occasion d'instruire à la lumière de son nouveau principe directeur. Le Tribunal n'a eu, à ce jour, aucune occasion d'examiner, dans le contexte d'un cas d'espèce, la question de sa compétence pour entendre et juger des questions de pension pour cause de douleur chronique, sans que la Commission n'ait pu, après le 3 juillet 1987, se prononcer la-dessus à la lumière de son nouveau principe directeur sur la douleur chronique. Cependant, on peut cerner facilement les arguments en présence. On peut interpréter à bon droit l'alinéa 86g(2) comme interdisant au Tribunal d'instruire, d'entendre ou de juger les appels en matière de soins médicaux, de réadaptation professionnelle, de droit aux indemnités ou aux prestations, de cotisations, de pénalités ou de transfert de dépenses, à moins que les procédures que la Commission a mises au point n'aient été épuisées à l'égard de ces litiges. L'argument avancé à l'appui de la position prise par le personnel de la Commission semble être qu'à compter du 3 juillet 1987, celle-ci a établi une procédure pour l'audition des questions de pension pour cause de douleur chronique, et qu'à l'égard des mêmes questions jugées par la Commission avant le 3 juillet et portées en appel devant le Tribunal, ces procédures n'avaient pas été appliquées, et encore moins épuisées. On pourrait en conclure que le Tribunal a été dessaisi de sa compétence

8. La présente directive de procédure s'applique peu importe l'étape à laquelle est rendu le processus d'identification, par le Tribunal, des questions de pension pour cause de douleur chronique et embrasse les quelques dossiers ayant déjà fait l'objet d'audiences (mais à l'égard desquels aucune décision définitive n'a été rendue à ce jour), sous réserve, bien entendu, de l'instruction des questions visées au paragraphe 7 ci-dessus, à la lumière des observations faites par les parties en la matière.

9. Les appelants ou requérants peuvent agir conformément aux conseils du Bureau des conseillers juridiques du Tribunal et accepter sans protestation l'ajournement de leur dossier respectif en attendant le réexamen de la Commission sans préjudice de leurs droits subséquents.

10. Le Tribunal tient à souligner que le fait qu'il identifie un dossier comme étant soumis à l'application de la présente directive de procédure ne signifie pas que le Tribunal conclut à l'existence d'une douleur chronique ou d'une admissibilité aux indemnités pour cause de douleur chronique. Ces questions restent à trancher par la Commission, sous réserve d'appel devant le Tribunal. L'application de la présente directive de procédure signifie seulement que le Tribunal a relevé des questions litigieuses en matière de douleur chronique.

EXPLICATION

Historique

La directive de procédure n° 9 vise les questions que posent au Tribunal les appels en matière de pension (ainsi que les demandes d'autorisation d'interjeter appel dans ce domaine).

Le Tribunal d'appel avait suspendu en décembre 1985 l'audition des appels en matière de pension, en attendant la formulation de sa stratégie de l'arrêt de principe concernant les appels en matière d'évaluation des pensions. Il s'agissait pour le Tribunal d'entendre un appel expressément choisi à cet effet et auquel participaient, outre les parties, la Commission des accidents du travail ainsi que des représentants invités du patronat et des travailleurs et qui fournissaient au Tribunal renseignements, preuves et arguments sur les questions très difficiles qui caractérisaient les appels en matière de pension. À l'issue de 27 jours d'audience, le Tribunal rendait sa *Décision n° 915*.

La *Décision n° 915* est un document volumineux, dans lequel les questions litigieuses des appels en matière de pension sont analysées en détail, pour servir de points de référence aux jurys d'audience du Tribunal dans l'audition d'autres appels de même nature. Elle porte sur deux questions principales: l'interprétation du paragraphe 45(1) et la douleur chronique.

Dans la partie de la *Décision no 915* consacrée à la douleur chronique, le Tribunal a conclu qu'il y avait effectivement des cas d'invalidité dus à une douleur chronique énigmatique et que, si les conditions présidant à l'invalidité établissaient un lien de cause à effet avec une lésion professionnelle antérieure, l'invalidité était indemnisable. Ces conclusions allaient à l'encontre de celles de la Commission sur la même question. Cependant, durant la période au cours de laquelle le cas n° 915 était entendu et jugé, la Commission procédait à son propre réexamen du principe directeur sur la douleur chronique. La *Décision n° 915* a été rendue en mai 1987, et, le 3 juillet 1987, le conseil d'administration de la CAT adoptait un principe directeur régissant l'indemnisation, par pension, des invalidités imputables à la douleur chronique résultant d'une lésion professionnelle. Ce principe directeur définit les troubles de douleur chronique et établit des règles d'évaluation des pensions visant les invalidités imputables aux troubles de cette nature.

DIRECTIVE DE PROCÉDURE N° 9

OBJET: PENSIONS POUR DOULEUR CHRONIQUE

1. La présente directive de procédure régit tous les appels en matière de pension et toutes les demandes d'autorisation d'appel contre les décisions rendues par la Commission avant le 1^{er} octobre 1987. La date du 1^{er} octobre a été choisie pour tenir compte de la période postérieure au 3 juillet 1987, pendant laquelle la Commission devait mettre en place les mécanismes administratifs d'application du nouveau principe directeur sur la douleur chronique, à observer dans son processus décisionnel.

2. Dans tous ces cas, lorsqu'il y a lieu de croire que l'invalidité du travailleur peut être imputée en tout ou en grande partie à une douleur chronique, le cas est renvoyé à la Commission pour qu'elle réexamine le dossier à la lumière de son nouveau principe directeur en la matière. Le Tribunal suspendra l'audition du cas jusqu'à ce qu'il connaisse la décision de la Commission concernant l'application de ce principe directeur au cas en instance. Une copie du dossier du travailleur sera communiquée à la Commission à cet effet.

3. Lorsque, à la suite du renvoi, la Commission aura rendu une décision définitive, le Tribunal, à la demande de l'appelant ou du requérant, rouvrira le dossier.

4. L'examen de l'admissibilité aux indemnités antérieure au 3 juillet 1987 sera également reporté dans ces cas jusqu'à ce que la Commission ait rendu la décision sur l'application de son principe directeur pour la période postérieure à cette date.

5. La présente directive de procédure repose sur la conviction qu'à le Tribunal que la Commission procédera avec diligence au réexamen de ces cas, eu égard au retard dont ils ont souffert jusqu'ici. Si le réexamen à entreprendre par la Commission accuse un retard déraisonnable, le Tribunal se réserve le droit de reprendre l'audition et le jugement de ces cas sans attendre la décision définitive de la Commission.

6. Le Bureau des conseillers juridiques du Tribunal identifiera les dossiers à l'égard desquels l'application de ce principe directeur entraînera, à son avis, l'ajournement de l'appel ou de la demande. Il demandera à la Commission de confirmer son intention de réexaminer ces dossiers. Une fois cette confirmation reçue, il informera les parties intéressées de son opinion quant à l'application probable de cette politique d'ajournement à leur dossier respectif.

7. Les parties qui entendent contester l'application de la présente directive de procédure à leur dossier pourront se faire entendre par un jury d'audience du Tribunal sur les deux questions suivantes:

- a) La présente directive de procédure s'applique-t-elle dans sa forme actuelle à leur dossier?
- b) Dans l'affirmative et eu égard aux raisons qui président à la présente directive, y a-t-il des motifs suffisants pour accorder une exception à cette directive de procédure?

ANNEXE C

avoir appliqués à la *Loi sur les accidents du travail*, il a conclu que la Commission devait verser de tels intérêts.

Après avoir passé en revue la *Décision n° 2064*, le personnel de la CAT a informé son conseil d'administration qu'il n'était pas d'accord sur le fait que la Commission était tenue en vertu de la Loi de verser des intérêts, mais qu'elle avait alors la compétence pour le faire. Il lui a recommandé de ne pas examiner la *Décision n° 2064* et d'approuver le versement d'intérêts sur les indemnités tardives ou celles retenues à tort, sans préjudice du fait qu'il estimait que la Commission n'était pas tenue de verser de tels intérêts.

Le conseil d'administration a accepté cette recommandation et a ordonné au personnel d'élaborer des recommandations en vue de la formulation d'un principe directeur sur le versement d'intérêts. À la fin de la période visée par le présent rapport, ces recommandations étaient toujours en attente.

Après la publication de la *Décision n° 18*, le personnel de la Commission a recommandé à son conseil d'administration d'attendre pour envisager de soumettre ladite décision à un examen en vertu du paragraphe 86n et lui a demandé l'autorisation de revoir le principe directeur de la Commission sur la fibromyalgie en vue de déterminer s'il convenait de recommander l'exécution d'un tel examen. Le personnel de la Commission a aussi recommandé de donner suite à la *Décision n° 18* entre temps. Le conseil d'administration a accepté ces recommandations, et le personnel de la Commission a entrepris un examen de la fibromyalgie et de son caractère sur le plan de l'indemnisation.

La Commission a donc continué à ne pas accorder d'indemnités pour les cas de fibromyalgie alors que le Tribunal d'appel demeurait fidèle à la *Décision n° 18* et ordonnait plusieurs fois par la suite le versement d'indemnités pour de tels cas. La Commission a continué à mettre à exécution les décisions du Tribunal à cet égard, tout en attendant les résultats de l'examen effectué par son personnel pour envisager de les soumettre à un examen en vertu du paragraphe 86n. Le conseil d'administration de la Commission n'a reçu qu'en novembre 1988 la recommandation finale de son personnel au sujet de l'indemnisation des cas faisant l'objet d'un diagnostic de fibromyalgie. Entre temps, la Commission avait mis à exécution plusieurs décisions du Tribunal ordonnant le versement d'indemnités pour de tels cas.

Au terme de son examen, le personnel de la Commission a recommandé au conseil d'administration d'adopter un principe directeur selon lequel les états invalidant l'objet d'un diagnostic de fibromyalgie seraient considérés comme étant indemnifiables. Ce principe directeur était fondé sur les similitudes existant entre les diagnostics de fibromyalgie et ceux de douleur chronique. Il exigeait de la Commission qu'elle traite les deux états comme s'ils ne pouvaient à toutes fins pratiques être distingués l'un de l'autre et qu'elle fasse en sorte que son principe directeur sur la douleur chronique vise aussi les cas de fibromyalgie. Ce qui est encore plus important, le personnel a recommandé d'appliquer aux cas de fibromyalgie les limites de rétroactivité imposées dans les cas de douleur chronique, en ne versant pas d'indemnités pour des périodes antérieures au 3 juillet 1987.

En ce qui concerne les décisions du Tribunal, ordonnant le paiement d'indemnités sans limite à l'égard de leur rétroactivité, que la Commission avait déjà mises à exécution, le personnel de la Commission a recommandé de ne pas tenter d'exiger le rappel des paiements excédentaires. Cette recommandation faisait exception d'un seul cas de fibromyalgie pour lequel le Tribunal avait ordonné le paiement d'une pension. Compte tenu de son approche à l'égard des décisions du Tribunal accordant des pensions pour douleur chronique pour des périodes antérieures au 3 juillet 1987, le personnel a estimé qu'il devait soumettre ce cas à l'examen en vertu du paragraphe 86n déjà en cours pour les *Décisions n°s 519, 915 et 915A*. Le conseil d'administration a accepté les recommandations du personnel et a adopté le principe directeur sur la fibromyalgie qu'il lui proposait.

3. Le versement d'intérêts sur les indemnités tardives

La *Décision n° 206A* (18 août 1988) traite de la question litigieuse que constitue l'obligation de la Commission de verser des intérêts sur les indemnités tardives ou sur celles retenues à tort. Ladite décision est importante dans le cadre du présent exposé sur les relations entre le Tribunal et la Commission parce qu'elle traite de façon exhaustive de la compétence du Tribunal à l'égard de questions dont il est saisi avant que la Commission n'ait eu l'occasion de les examiner. Le jury de la *Décision n° 206A* a constaté que les principes de droit régissant les intérêts sur les indemnités tardives ou retenues à tort avaient changé au cours des dernières années et, après les

la common law, tel que lesdits principes sont appliqués aux décisions de tribunaux administratifs incompatibles avec la position prise par des organismes de première instance sur des questions génériques d'ordre juridique ou médical, exige que l'effet rétroactif de telles décisions soit raisonnablement limité. Le jury a toutefois estimé qu'il fallait, en mettant en application les principes de rétroactivité de la common law, limiter la mise en application rétroactive des décisions de deuxième instance visant les indemnités des cas de pension pour douleur chronique afin que ces indemnités soient versées pour des périodes débutant le 27 mars 1986. Cette date marquait le début de la procédure qui avait donné lieu à la décision en deuxième instance du Tribunal sur la douleur chronique et précédait de quelque 16 mois le 3 juillet 1987, date limite adoptée par le conseil d'administration en matière d'indemnités pour douleur chronique.

En traitant de la question de la rétroactivité, le jury d'audience de la *Décision n° 915A* a pu indiquer que le Tribunal considérait le principe directeur de la Commission sur la douleur chronique comme s'appliquant à la fois à la douleur chronique énigmatique et à l'amplification psychogène de la douleur, troubles définis dans la *Décision n° 915*. C'est alors que le Tribunal s'est aperçu, comme nous l'avons indiqué plus tôt, qu'il était dans l'erreur et que le personnel de la Commission considérait le principe directeur comme étant non applicable aux cas d'amplification de la douleur.

À la fin de la période visée par ce rapport, le Tribunal n'avait encore rendu aucune décision à l'égard d'un cas auquel la Commission aurait appliqué son principe directeur sur la douleur chronique. Le Tribunal n'a donc pas eu l'occasion d'examiner dans quelle mesure le principe directeur de la Commission respectait les prescriptions de la Loi. Toutefois, le conseil d'administration de la Commission, qui s'était déjà engagé à le faire conjointement pour la *Décision n° 915A*, la *Décision n° 519* et les décisions qui y sont reliées et pour l'aspect rétroactivité qu'elles comportent, a décidé de soumettre aussi la *Décision n° 915* à un examen en vertu du paragraphe 86n, après que le Tribunal eut soulevé, dans la *Décision 915A*, la possibilité d'un différend entre la Commission et le Tribunal à l'égard de l'indemnisation des cas d'amplification de la douleur.

Lors de cet examen, qui vise maintenant les *Décisions n°s 519* (et les décisions qui y sont reliées), *915 et 915A*, le conseil d'administration de la Commission entend non seulement se pencher sur les questions touchant à la rétroactivité et à l'indemnisation des travailleurs souffrant de douleur chronique, mais aussi sur les obligations du Tribunal lorsque le conseil d'administration établit de nouveaux principes directeurs. L'ordre du jour de cet examen se trouve dans la Gazette de l'Ontario, vol. 121-44 (29 octobre 1988) à 5546.

À la fin de la période visée par ce rapport, le conseil d'administration recevait toujours des observations sur ces questions.

2. Fibromyalgie

Dans sa *Décision n° 18* (11 mars 1987), le Tribunal d'appel a statué que l'état pathologique auquel le corps médical réfère par le terme "fibromyalgie", et parfois par le terme "fibrosite", est attribuable à une pathologie organique pouvant résulter d'un accident du travail. Il s'agit en principe d'un état pathologique indemnisable en vertu de la Loi sur les accidents du travail.

Par le passé, la CAT avait pour principe de considérer les cas donnant lieu à un diagnostic de fibrosite ou de fibromyalgie comme non indemnissables. À l'instar des cas de douleur chronique, ils étaient non indemnissables parce que l'état était imaginaire et susceptible d'être surmonté si le travailleur était assez motivé pour reprendre le travail ou parce qu'il était impossible de prouver qu'ils résultaient d'accidents reliés au travail.

directeur de la Commission prévoyait qu'aucune indemnité pour invalidité découlant de douleur chronique ne serait versée pour des périodes antérieures au 3 juillet 1987, date de l'approbation du principe.

Lors de son examen de la question du renvoi à la Commission des cas de pension pour douleur chronique dont il avait été saisi, le Tribunal s'était entre autres laissée influencer par le fait que la *Décision n° 915* était la seule qu'il avait alors rendue à l'égard d'un cas de cette nature. De plus, le Tribunal croyait, comme il a été indiqué plus tôt, que la Commission considérait la *Décision n° 915* comme étant généralement compatible avec son principe directeur.

Toutefois, la situation était bien différente dans les cas d'invalidité temporaire causée par la douleur chronique. Le Tribunal avait systématiquement accordé des indemnités d'invalidité temporaire pour des problèmes de cette nature, sans imposer de limite à l'égard de la rétroactivité desdites indemnités, pour toute une série d'appels datant presque de sa création (les décisions mentionnées le plus souvent sont les *Décisions n°s 9, 11 et 50*).

En ce qui concerne les indemnités d'invalidité temporaire résultant de douleur chronique, l'examen du rôle du nouveau principe directeur de la Commission dans la procédure du Tribunal n'a pas été centré sur le renvoi des cas à la Commission. Avec le recul actuel, il est difficile de déterminer pourquoi il en a été ainsi. Si l'on envisage la question du point de vue de la Commission, il semble qu'elle aurait du insister pour être la première à appliquer son principe directeur à ces cas, comme elle le faisait pour les cas de pension. De son côté, le Tribunal en est simplement venu à se demander s'il devait appliquer à ces cas les limites de rétroactivité que prévoyait le principe directeur pour ce genre d'indemnités.

Le Tribunal a exposé pour la première fois sa position à cet égard dans la *Décision n° 519*. Dans cette décision, le jury d'audience déclare que la CAT n'est pas investie de la compétence requise pour forcer le Tribunal à modifier sa position à l'égard d'une question de droit général en faisant adopter par son conseil d'administration un nouveau principe directeur incompatible avec ladite position. Selon le Tribunal, la Commission ne peut modifier les décisions du Tribunal qu'en se prévalant de la procédure d'examen prévue au paragraphe 86n de la Loi. Le Tribunal a donc décidé, initialement dans la *Décision n° 519* et, ensuite, dans tous les cas portant sur des indemnités d'invalidité temporaire résultant de douleur chronique, qu'il continuerait à prendre la même position à l'égard de telles indemnités et qu'il ordonnerait que leur versement soit intégralement rétroactif, à moins que le conseil d'administration ne décide d'exercer ses pouvoirs d'examen en vertu du paragraphe 86n et ne réexamine la position du Tribunal, ou jusqu'à ce qu'il le fasse.

Le conseil d'administration a décidé d'exercer ses pouvoirs d'examen en vertu du paragraphe 86n à l'égard de la *Décision n° 519* et, par la suite, de toutes les décisions dans lesquelles le Tribunal avait pris la même position. La CAT se prévalait alors de ses pouvoirs d'examen pour la deuxième fois, après l'avoir fait à l'égard de la *Décision n° 72* du Tribunal.

Au moment où la *Décision n° 519* a été rendue, le jury d'audience de la *Décision n° 915* tentait toujours de déterminer s'il devait limiter la rétroactivité des indemnités pour douleur chronique accordées dans la *Décision n° 915* et, dans l'affirmative, dans quelle mesure il devait le faire. Le jury n'a pas tranché la question dans la *Décision n° 915* afin d'obtenir plus d'observations et de poursuivre son examen. Comme le Tribunal devait bientôt rendre sa décision sur la rétroactivité dans le cadre de la *Décision n° 915*, le conseil d'administration a reporté son examen de la *Décision n° 519* et des cas qui y sont reliés jusqu'à ce que ladite décision soit rendue.

La question de la rétroactivité dans la *Décision n° 915* a été jugée dans la *Décision n° 915A*, rendue le 5 mai 1988. Dans cette décision, le jury a conclu que, dans les cas de pension pour douleur chronique, la Loi sur les accidents du travail, interprétée conformément aux principes de

"le Tribunal et la Commission définissant leur rôle respectif dans ces cas à la lumière du nouveau principe directeur adopté ultérieurement par la Commission sur la douleur chronique".

Voici en quoi consistait le problème. Le personnel de la Commission estimait que la Commission devait revoir, à la lumière de son nouveau principe directeur, tous les cas de douleur chronique dont le Tribunal avait été saisi mais qu'il n'avait pas entendus ou réglés au moment de la communication du principe directeur en question. Il considérait que le Tribunal n'avait plus la compétence requise pour traiter ces cas tant que la Commission n'aurait pas déterminé comment son nouveau principe s'y appliquait.

En vertu de l'alinéa 86g(2), le Tribunal n'est compétent qu'à l'égard de décisions définitives de la Commission pour lesquelles elle a épuisé toutes ses procédures. Le personnel de la Commission alléguait que les cas de douleur chronique comportaient, après l'adoption du principe directeur sur l'indemnisation de certains cas de cette nature, des questions au sujet desquelles on ne pouvait plus affirmer que la Commission avait épuisé toutes ses procédures, même si ces cas avaient été portés en appel avant la communication dudit principe directeur. Il a donc informé le Tribunal que la Commission estimerait nécessaire de poursuivre son examen de tels cas et de rendre ses propres décisions, même si le Tribunal traitait ceux dont il avait été saisi.

La Commission a semble-t-il pris cette position parce qu'elle estimait nécessaire d'être la première à mettre en application son nouveau principe directeur. (Bien entendu, elle n'a pas contesté le fait que le Tribunal serait en droit d'examiner les cas en question en dernière instance si la décision qu'elle rendrait en vertu de son principe directeur était portée en appel.)

C'est l'avocat-conseil du Tribunal et celui de la Commission qui ont débattu cette question.

La position du personnel de la Commission à cet égard a amené le Tribunal à entreprendre un examen particulièrement minutieux de sa compétence et des relations qu'il convenait d'entretenir avec la Commission. Après de vifs débats internes, le Tribunal a conclu qu'il avait la compétence requise pour traiter ces cas mais qu'il avait aussi la compétence pour les renvoyer à la Commission pour qu'elle soit la première à les examiner en vertu de son principe directeur sur la douleur chronique et qu'il serait généralement approprié de le faire.

Le Tribunal a ensuite émis une directive de procédure expliquant toutes les raisons pour lesquelles il avait décidé de renvoyer ces cas à la Commission afin d'éviter que sa décision n'entraîne des malentendus chez les travailleurs ou le patronat au sujet de la façon dont il percevait son rôle et ses relations avec la Commission. La *Directive de procédure n° 9* a été émise le 23 octobre 1987. Cette directive, qui constitue la *Section I* de cette annexe, présente un intérêt particulier parce qu'elle révèle clairement comment le Tribunal perçoit son rôle dans le système d'indemnisation et ses relations avec la Commission.

La *Directive de procédure n° 9* était centrée sur la controverse entourant les cas de pension comportant des états pathologiques de douleur chronique. La *Décision n° 915* portait sur un cas de pension, les cas en attente jusqu'à la publication de ladite décision étaient tous des cas de pension, et il n'était pas clair aux yeux du Tribunal que le principe directeur de la Commission englobait les indemnités d'invalidité temporaire pour douleur chronique, en plus des pensions. Dans sa *Directive de procédure n° 9*, le Tribunal n'a traité que des appels en attente en matière de pension.

Peu après la parution de la *Directive de procédure n° 9*, il est toutefois devenu clair que le personnel de la Commission estimait que son principe directeur régissait les indemnités d'invalidité temporaire tout autant que les indemnités d'invalidité permanente et, surtout, que les facteurs limitant la rétroactivité des indemnités pour douleur chronique devaient s'appliquer de la même manière qu'il s'agisse d'indemnités d'invalidité temporaire ou permanente. Le principe

ÉVOLUTION DES RELATIONS ENTRE LE TRIBUNAL ET LA COMMISSION

1. Douleur chronique et rétroactivité

À la CAT comme au Tribunal d'appel, la question de l'indemnisation de la douleur chronique énigmatique et de l'amplification psychogène de la douleur définies dans la *Décision n° 915* (26 mai 1987) du Tribunal, troubles désignés par l'expression "douleur chronique", est toujours à l'ordre du jour. Elle a aussi marqué une étape particulière dans l'évolution des relations entre les deux organismes.

Peu après que le Tribunal eut signifié, dans sa *Décision n° 915*, que la douleur chronique était en principe indemnisable, le conseil d'administration de la CAT a adopté un principe directeur sur l'indemnisation des cas qu'elle relie à des "troubles de douleur chronique". Par la même occasion, le conseil d'administration a décidé, sur la recommandation de son personnel, de ne pas examiner la *Décision n° 915* en vertu des pouvoirs que lui confère le paragraphe 86n de la Loi.

En prenant cette décision, la Commission s'était explicitement réservé le droit d'examiner la *Décision n° 915* à un stade ultérieur, toutefois, elle avait aussi donné l'impression, à tout le moins au Tribunal, qu'elle ne considérerait pas ladite décision comme étant énormément incompatible avec le principe directeur sur la douleur chronique qu'elle venait d'approuver. Le Tribunal n'a appris que beaucoup plus tard que, dans la mesure où le personnel de la Commission était concerné, cette impression n'était pas entièrement fondée.

De la façon dont le personnel de la Commission en est venu à l'appliquer, le nouveau principe directeur permet l'indemnisation des invalidités causées par la douleur chronique énigmatique mais ne permet pas l'indemnisation de la douleur chronique causée par l'amplification psychogène de la douleur attribuable à un problème organique résiduel. Ce principe ne prévoit l'indemnisation que dans les cas de douleur chronique de nature surtout non organique (définition servant à la catégorisation des cas de douleur chronique énigmatique) et considère les cas d'amplification psychogène de la douleur comme étant en grande partie d'origine organique. Ces derniers cas sont encore traités en vertu de l'ancien principe directeur, qui stipule que tout élément d'amplification psychogène de la douleur doit être identifié et écarté lors de la détermination du degré d'invalidité indemnisable.

À la longue, il est donc devenu clair que, de la manière dont il était appliqué à tout le moins, le principe directeur de la Commission entraînait sérieusement en conflit avec la *Décision n° 915*. Dans sa *Décision n° 915*, qui portait essentiellement sur l'amplification de la douleur, le Tribunal avait conclu que l'élément amplification psychogène de la douleur était indemnisable au même titre que l'élément organique de l'invalidité. Le fait que la Commission ait décidé de ne pas examiner ladite décision a voilé cet important conflit pendant un certain temps. Pendant une période cruciale, il a donc existé un malentendu au sujet de la position du personnel de la Commission, ce qui a influencé jusqu'à un certain point le Tribunal dans son traitement des appels ultérieurs en matière de pension pour douleur chronique.

Après que la Commission eut adopté son principe directeur sur la douleur chronique, son personnel et celui du Tribunal ont débattu la question du traitement des cas de douleur chronique dont le Tribunal avait été saisi mais qu'il n'avait pas entendus ou réglés à la date d'approbation du principe directeur en question. Le *Deuxième rapport* fait allusion à ce débat et à ses conséquences sur le traitement du grand nombre de cas que le Tribunal avait laissés en attente jusqu'à la publication de la *Décision n° 915*. À la page 5 dudit rapport, on peut lire que le traitement de ces appels accusait encore un léger retard à la fin de la période visée par ce rapport,

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL
TROISIÈME RAPPORT

ANNEXE C

ÉVOLUTION DES RELATIONS ENTRE LE TRIBUNAL
ET LA COMMISSION

Section I : Directive de procédure n° 9

ANNEXE B

David C. Mason

Membre du Tribunal représentant les employeurs (plein temps)

Elaine Newman

Vice-présidente (plein temps)
Actuellement avocat-conseil du Tribunal

Kathleen O'Neil

Vice-présidente (plein temps)

James R. Thomas

Président suppléant

Allen S. Merritt

M. Merritt a été nommé membre du Tribunal représentant les employeurs le 23 juin 1988. Il est actuellement conseiller en relations de travail dans sa propre firme de conseillers. M. Merritt a pris sa retraite en 1985. Il était alors surintendant des relations avec les employés pour le Conseil scolaire du grand Toronto et négociateur en chef de tous les conseils scolaires du grand Toronto.

Gerry M. Nipshagen

M. Nipshagen a été nommé membre du Tribunal représentant les employeurs le 1^{er} octobre 1988. Il possède une vaste expérience de gestionnaire dans les domaines de la fabrication et de l'agriculture. De 1980 à 1988, il était directeur du service de la santé et de la sécurité au travail de la compagnie Leaver Mushrooms et était responsable de l'indemnisation des travailleurs ainsi que des questions de santé et de sécurité.

Fortunato (Lucky) Rao

M. Rao a été nommé membre du Tribunal représentant des travailleurs le 11 février 1988. M. Rao était auparavant représentant des Métallurgistes unis d'Amérique et il anime, depuis 14 ans, l'émission "Labour News" à la télévision communautaire.

John Ronson

M. Ronson a été nommé membre du Tribunal représentant les employeurs le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Il a acquis une très grande expérience dans le perfectionnement du personnel chez Stelco.

Sara Sutherland

M^{me} Sutherland a été nommée membre du Tribunal le 17 décembre 1987. Elle est actuellement superviseuse des services de liaison externe à la division de la santé et de la sécurité d'Ontario Hydro.

Membres qui ont remis leur démission ou dont le mandat a pris fin au cours de la période couverte par le rapport

Donald Grenville

Membre du Tribunal représentant les employeurs (temps partiel)

John Magwood

Vice-président (temps partiel)

ANNEXE B

Roy Higson

M. Higson a été nommé membre du Tribunal représentant les travailleurs le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Il a récemment pris sa retraite, après avoir travaillé à l'Union des employés de gros, de détail et de magasins à rayons. Il a été représentant international de la section locale 414 pendant neuf ans et il a 29 ans d'expérience syndicale.

Faith Jackson

M^{me} Jackson a été nommée membre du Tribunal représentant les travailleurs le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Aide-infirmière à la maison de soins infirmiers Guildwood Villa de 1972 à 1985, M^{me} Jackson a été membre du Conseil exécutif de l'Union internationale des employés des services pendant six ans.

Donna Jewell

Résidente de London, M^{me} Jewell a été nommée membre du Tribunal représentant les employés le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Elle a été directrice adjointe de la sécurité chez Ellis-Don Ltd pendant environ sept ans. Elle a dirigé les programmes de sécurité et de traitement des demandes d'indemnités à la CAT chez Ellis-Don.

Peter Klym

M. Klym a été nommé membre du Tribunal représentant les travailleurs le 14 mai 1986. Il travaille actuellement à l'Association des travailleurs canadiens de la communication.

Teresa Kowalishin

M^{me} Kowalishin a été nommée membre du Tribunal représentant les employés le 14 mai 1986. Elle est avocate pour la ville de Toronto depuis qu'elle a été reçue au barreau en 1979.

Frances L. Lankin

M^{me} Lankin a d'abord été nommée membre à plein temps du Tribunal représentant les travailleurs le 11 décembre 1985. Pendant les cinq années qui ont précédé sa nomination, elle était agent de recherche et d'éducation au Syndicat des employés de la fonction publique de l'Ontario. Elle était également coordonnatrice de l'égalité des chances d'emploi pour ce syndicat. Le 25 février 1988, la nomination de membre à plein temps de M^{me} Lankin a été modifiée au statut de membre à temps partiel afin qu'elle puisse accepter un poste au S.E.F.P.O..

Frank Byrnes
M. Byrnes a été nommé membre du Tribunal représentant les travailleurs le 14 mai 1986. Il était auparavant agent de police et membre du Comité paritaire consultatif de la Commission des accidents du travail.

Herbert Clappison

M. Clappison a été nommé membre du Tribunal représentant les employés le 14 mai 1986. M. Clappison a pris sa retraite en 1982 après 37 ans de service à Bell Canada. Au moment de sa retraite, il était directeur de l'emploi et des relations de travail.

George Drennan

M. Drennan a été nommé membre du Tribunal représentant les travailleurs le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Il est représentant de la Grande Loge de l'Association internationale des machinistes et des travailleurs de l'aéro-astronautique depuis 1971.

Douglas Felice

M. Felice a été nommé membre du Tribunal représentant les travailleurs le 14 mai 1986. Il travaille actuellement au Syndicat canadien des travailleurs du papier.

Mary Ferrari

M^{me} Ferrari a été nommée membre du Tribunal représentant les travailleurs le 14 mai 1986. Auparavant, elle était conseillère juridique auprès du Groupe des victimes d'accidents industriels de l'Ontario.

Patti Fuhrman

M^{me} Fuhrman a été nommée membre du Tribunal représentant les travailleurs le 14 mai 1986. Elle a été assistante sociale au Advocacy Resource Centre for the Handicapped et, plus récemment, elle travaillait au ministère fédéral de l'Emploi et de l'Immigration.

Mark Gabinet

M. Gabinet a été nommé membre du Tribunal représentant les employés le 17 décembre 1987. Il est actuellement administrateur au service de la santé et de la sécurité de la ville de Brampton. Il poste qu'il occupe depuis 1984. Il travaillait auparavant comme conseiller en recherches pour l'Association pour la prévention des accidents industriels.

ANNEXE B

Susan Stewart

M^{me} Stewart a été nommée au Tribunal le 14 mai 1986. Après avoir fait un stage à la Commission des relations de travail de l'Ontario, elle a été reçue au Barreau de l'Ontario en 1981. Elle est actuellement un arbitre agréé par le ministère du Travail.

Gerald Swartz

M. Swartz a été nommé au Tribunal le 11 mars 1987. Il a déjà été directeur de la recherche au ministère du Travail. Il est aujourd'hui président de Canadian Loric Consultants Ltd. Il connaît bien la gestion des ressources humaines, la négociation des conventions collectives, l'arbitrage et les questions liées à la rémunération des travailleurs et l'évaluation des normes d'emploi.

Paul Torrie

M. Torrie a été nommé au Tribunal le 14 mai 1986. Associé du cabinet d'avocats Torrie, Simpson, il pratique le droit administratif, le droit des compagnies et divers aspects du droit civil. M. Torrie a également fait l'expérience du travail juridique communautaire dans le cadre du programme des Services d'aide juridique communautaire d'Osgoode Hall.

Peter Warrigan

M. Warrigan a été nommé au Tribunal le 14 mai 1986. Il a acquis une grande expérience des relations de travail au Syndicat des employés de la fonction publique de l'Ontario. Il dirige actuellement un bureau de conseillers auprès du gouvernement et des syndicats et a écrit un grand nombre d'articles dans le domaine des relations de travail.

Chris Wydrzynski

M. Wydrzynski a été nommé au Tribunal le 11 mars 1987. Professeur de droit à l'université de Windsor depuis 1975, il a été reçu au barreau en 1982. Il enseigne le droit administratif et a agi en qualité d'arbitre, d'analyste, d'expert-conseil, d'évaluateur de recherches et de membre de jury.

Membres représentant les travailleurs et les employeurs: membres à temps partiel

Shelley Acheson

M^{me} Acheson a été nommée membre du Tribunal représentant les travailleurs le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Elle était directrice des droits de la personne à la Fédération des travailleurs de l'Ontario de 1975 à 1984.

Dave Beattie

M. Beattie a été nommé membre du Tribunal représentant les travailleurs le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Il a 20 ans d'expérience comme représentant de travailleurs accidentés ou de pompiers invalides dans des audiences devant les arbitres aux appels et la Commission d'appel de la CAT.

M^{me} Lax a été nommée au Tribunal le 14 mai 1986. Reçue au barreau en 1978, elle a pratiqué le droit au cabinet d'avocats Weir & Foulds, se spécialisant dans le droit civil et administratif. Elle est actuellement vice-doyenne de la Faculté de droit de l'université de Toronto.

Victor Marafioti

M. Marafioti a été nommé au Tribunal le 11 mars 1987. Il est actuellement directeur des programmes commerciaux du collège Centennial. Il a été pendant près de dix ans directeur du centre de réadaptation COSTI et a collaboré étroitement avec la Commission des accidents du travail.

William Marcotte

M. Marcotte a été nommé au Tribunal le 14 mai 1986. Il figure comme médiateur sur la liste des arbitres agréés par le ministre du Travail. Il donne des cours sur les méthodes de négociation collective à l'université Western Ontario.

Eva Marszewski

M^{me} Marszewski a été nommée au Tribunal le 14 mai 1986. Reçue au barreau en 1976, elle pratique actuellement le droit dans un cabinet privé, se spécialisant dans les poursuites civiles, le droit de la famille, le droit municipal et le droit du travail. Elle était membre du Conseil consultatif de l'Ontario sur la condition féminine.

Joy McGrath

M^{me} McGrath a été nommée membre du Tribunal le 10 décembre 1987. Elle a été reçue au Barreau de l'Ontario en 1977 et pratique actuellement le droit dans un cabinet privé. Avant de suivre des cours de droit, M^{me} McGrath avait six ans d'expérience comme présidente et directrice générale d'une compagnie spécialisée dans le développement commercial et résidentiel.

Denise Réaume

M^{me} Réaume a été nommée au Tribunal le 11 mars 1987. Elle enseigne le droit administratif à l'université de Toronto. Elle a déjà effectué une étude pour la Commission de réforme du droit de l'Ontario sur la rémunération en cas de perte de capacité de travail.

Sophia Sperdakos

M^{me} Sperdakos a été nommée au Tribunal le 14 mai 1986. Reçue au Barreau de l'Ontario en 1982, elle travaille actuellement au cabinet d'avocats Dunbar, Sachs, Appell. Elle était présidente et travailleuse juridique du programme des Services d'aide juridique communautaire de la Faculté de droit d'Osgoode Hall.

MEMBRES DU TRIBUNAL À TEMPS PARTIEL

Vice-présidents à temps partiel

Arjun Aggarwal

M. Aggarwal a été nommé au Tribunal le 14 mai 1986. Il est actuellement coordonnateur des études de gestion du travail au collège Confédération de Thunder Bay en Ontario. Il a une grande expérience juridique en droit du travail et comme expert-conseil en matière de relations de travail, conciliateur, enquêteur et arbitre. Il est actuellement arbitre agréé.

Sandra Chapnik

M^{me} Chapnik a été nommée au Tribunal le 11 mars 1987. Attachée au cabinet d'avocats Leonard A. Banks and Associates, elle a également été commissaire à temps partiel à la révision des loyers et enquêteuse à la Commission des relations de travail en éducation.

Gary Farb

M. Farb a été nommé au Tribunal le 11 mars 1987. Il a été reçu au barreau en 1978 et pratique le droit dans un cabinet privé. Il a une vaste expérience du droit administratif et a notamment été conseiller juridique au Bureau de l'ombudsman pendant deux ans.

Marsha Faubert

M^{me} Faubert a été nommée membre du Tribunal le 10 décembre 1987. Elle a été reçue au Barreau de l'Ontario en 1981 et s'est jointe au Tribunal en tant qu'avocate au Bureau des conseillers juridiques du Tribunal en octobre 1985, après avoir travaillé pendant quatre ans dans un cabinet privé.

Karl Friedmann

M. Friedmann a été nommé membre du Tribunal le 17 décembre 1987. Il est détenteur d'un doctorat en sciences politiques et a enseigné à l'université de Calgary pendant 13 ans. De 1979 à 1985, il a été le premier ombudsman de Colombie-Britannique.

Ruth Hartman

M^{me} Hartman a été nommée au Tribunal le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Elle pratique actuellement le droit dans un cabinet privé spécialisé dans les appels administratifs devant les tribunaux provinciaux. Elle a été auparavant conseillère juridique de l'ombudsman pendant cinq ans.

Martin Meslin

M. Meslin a été nommé membre à temps partiel du Tribunal représentant les employeurs le 11 décembre 1985. Son mandat a été renouvelé le 1^{er} août 1988 pour une période de trois ans en tant que membre à plein temps. Il a dirigé sa propre imprimerie pendant plus de 30 ans. Il était membre non juriste du Comité d'appel du régime d'aide juridique de l'Ontario, membre non juriste nommé du conseil de direction du Collège des médecins et chirurgiens de l'Ontario et membre du tribunal de discipline du Collège.

Kenneth W. Preston

M. Preston a été nommé membre du Tribunal représentant les employeurs le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de deux ans. Ingénieur chimiste diplômé, M. Preston a été directeur des relations de travail chez Union Carbide pendant dix ans et vice-président des ressources humaines chez Kellogg Salada pendant trois ans.

Maurice Robillard

M. Robillard a été nommé membre du Tribunal représentant les travailleurs le 11 mars 1987. Il était auparavant depuis 20 ans représentant international de l'Union des Travailleurs amalgamés du vêtement et du textile et a acquis une vaste expérience de la médiation des problèmes internes des syndicats, de la négociation des conventions collectives, de la comparution devant les commissions provinciales des relations de travail et de la sensibilisation des travailleurs aux droits que leur confèrent les lois provinciales en matière de travail.

Jacques Séguin

M. Séguin a été nommé membre du Tribunal représentant les employeurs le 1^{er} juillet 1986. M. Séguin a été président de la Division du contreplaqué de bois mou de l'Association canadienne du contreplaqué de bois dur de l'A.C.C.B. et vice-président de l'ACCBD de 1981 à 1983. Il a pris sa retraite de Lévésque Plywood Limitée comme directeur général en 1984.

ANNEXE B

Sam Fox

M. Fox a été nommé membre du Tribunal représentant les travailleurs le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de deux ans. Ancien président du Conseil des travailleurs de la municipalité urbaine de Toronto, M. Fox est aussi ancien codirecteur et vice-président international de l'Union des Travaillleurs amalgamés du vêtement et du textile.

Karen Guillemette

M^{me} Guillemette a été nommée membre du Tribunal représentant les employés le 2 juillet 1986. M^{me} Guillemette a été administratrice de la santé au travail à Kidd Creek Mines Limited de Timmins, et elle est membre de l'Association des mines de l'Ontario. Avant d'être nommée administratrice, elle était infirmière industrielle à la mine Kidd Creek.

Lorne Heard

M. Heard a été nommé membre du Tribunal représentant les travailleurs le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de trois ans. Il a plus de 30 ans d'expérience dans le domaine des accidents du travail. Avant sa nomination au Tribunal, M. Heard poursuivait depuis 13 ans une carrière chez les Métallurgistes unis d'Amérique, où il était responsable national de la santé et de la sécurité au travail ainsi que de l'indemnisation des travailleurs accidentés.

W. Douglas Jago

M. Jago a été nommé membre du Tribunal représentant les employés le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de deux ans. M. Jago a été directeur en charge de Brantford Mechanical Ltd ainsi que président et propriétaire principal de W.D. Jago Ltd, deux entreprises en travaux mécaniques. Il a été membre actif de l'Association des entrepreneurs en mécanique.

Raymond Lebert

M. Lebert a été nommé membre du Tribunal représentant les travailleurs le 1^{er} juin 1988. Avant sa nomination au Tribunal, M. Lebert était secrétaire-trésorier des finances de la section locale 444 de l'association des travailleurs canadiens de l'automobile.

Nick McCombie

M. McCombie a été nommé membre du Tribunal représentant les travailleurs le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de trois ans. Avant sa nomination au Tribunal, il a travaillé sept ans comme travailleur juridique à la clinique juridique des Conseillers des travailleurs blessés à Toronto.

Antonio Signoroni

M. Signoroni a été nommé au Tribunal le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de trois ans. Avocat depuis 1982, M. Signoroni a dix ans d'expérience comme président à temps partiel du Conseil des arbitres de la Commission de l'assurance-chômage. Avant d'embrasser la carrière juridique, il a fait un travail considérable dans des organismes de service à la communauté italienne. Il était conseiller scolaire au Conseil des écoles séparées de Toronto de 1980 à 1982.

David Starkman

M. David Starkman a été nommé au Tribunal le 1^{er} août 1988 pour une période de trois ans. Il a été reçu au Barreau de l'Ontario en 1980 et a exercé sa profession au cabinet d'avocats Golden, Green & Starkman. M. Starkman s'est joint au tribunal en 1985 en tant que premier avocat-conseil du Tribunal.

Ian J. Strachan

M. Strachan a été nommé au Tribunal le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de deux ans et demi. Reçu au barreau en 1971, M. Strachan s'est spécialisé dans les conseils aux petites entreprises sur les pratiques commerciales et les relations de travail. Il a aussi été directeur de l'Organisation canadienne de la petite entreprise.

Membres représentant les employés et les travailleurs : membres à plein temps

Robert Apsey

M. Apsey a été nommé membre du Tribunal représentant les employés le 11 décembre 1985. Son mandat a été renouvelé le 11 décembre 1988 pour une période de trois ans. Il a occupé un certain nombre de postes de responsabilité chez Reed Stenhouse pendant 25 ans jusqu'à sa retraite anticipée en 1983, alors qu'il était vice-président du conseil et premier vice-président.

Brian Cook

M. Cook a été nommé membre du Tribunal représentant les travailleurs le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période d'un an. Ce mandat d'un an seulement reflète la politique d'"échelonnement" du Tribunal. On s'attend à ce qu'il obtienne un nouveau mandat de trois ans le 1^{er} octobre 1989. Diplômé de l'université de Toronto, M. Cook a été travailleur juridique communautaire au Groupe des victimes d'accidents industriels de l'Ontario pendant cinq ans.

Vice-présidents à plein temps

Jean Guy Bigras

M. Bigras, qui a d'abord été nommé vice-président à temps partiel le 14 mai 1986, a été nommé vice-président à plein temps le 17 décembre 1987. Il était auparavant journaliste et employé de la fonction publique. Au cours de ses 20 années de journalisme pour des quotidiens de North Bay et d'Ottawa, il a acquis une vaste expérience dans les domaines du travail et de la justice. Au service du gouvernement de l'Ontario, il a eu la responsabilité de coordonner un comité d'action du ministère de la Santé.

Nicolette Carlan (Catton)

M^{me} Carlan a été nommée au Tribunal le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de deux ans. Diplômée en sociologie, elle a travaillé neuf ans au Bureau de l'ombudsman avant sa nomination. De 1978 à 1985, elle était responsable de la Direction générale des accidents du travail au Bureau de l'ombudsman.

Maureen Kenny

M^{me} Kenny a été nommée au Tribunal le 30 juillet 1987. Elle a été reçue au Barreau de l'Ontario en 1979 et a travaillé quelque temps dans un cabinet privé, avant d'être analyste des politiques au ministère du Travail de l'Ontario. Elle était conseillère juridique du président du Tribunal depuis octobre 1985.

Faye W. McIntosh-Janis

M^{me} McIntosh-Janis a été nommée au Tribunal le 14 mai 1986. Reçue au Barreau de l'Ontario en 1978, elle a travaillé six ans à plein temps au Service de recherche chez Osler, Hoskin et Harcourt. Avant d'entrer au Tribunal, elle était avocate principale à la Commission des relations de travail de l'Ontario.

John Paul Moore

M. Moore a été nommé vice-président à temps partiel du Tribunal le 16 juillet 1986. Il a été nommé vice-président à plein temps le 1^{er} mai 1988 pour une période de trois ans. Reçu au barreau en 1978, M. Moore était auparavant membre à temps partiel de la Faculté de droit de l'université de Toronto ainsi qu'avocat à temps partiel aux Services juridiques du centre-ville où il traitait avec divers tribunaux administratifs.

Zeynep Onen

M^{me} Onen a été nommée au Tribunal le 1^{er} octobre 1988 pour une période de trois ans. Reçue au Barreau de l'Ontario en 1982, M^{me} Onen a travaillé au Bureau de l'ombudsman pendant trois ans. Elle s'est jointe au Tribunal en octobre 1985 et a été avocate principale du Bureau des conseillers juridiques du Tribunal de 1986 à 1988.

LES MEMBRES DU TRIBUNAL

Président

S. Ronald Ellis

M. Ellis est le premier président du Tribunal. Il est entré en fonction le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour une période de trois ans. M. Ellis, qui a été forme et a travaillé comme ingénieur avant d'entrer à la Faculté de droit, était auparavant l'un des associés du cabinet d'avocats torontois Osler, Hoskin et Harcourt. Plus récemment, il était professeur à la Faculté de droit d'Osgoode Hall, où il occupait le poste de directeur, avant de devenir directeur de la Faculté des services juridiques communautaires de Parkdale. Avant d'être nommé au Tribunal, il était directeur de l'éducation et chef des cours de formation professionnelle du barreau de la Société du Barreau du Haut-Canada. M. Ellis a une expérience considérable comme arbitre des relations de travail.

Présidente suppléante

Laura Bradbury

M^{me} Bradbury a été nommée au Tribunal le 1^{er} octobre 1985. Son mandat a été renouvelé le 1^{er} octobre 1988 pour un an. Cette nouvelle nomination d'un an seulement reflète la politique d'"échelonnage" du Tribunal. On s'attend à ce que son mandat soit renouvelé le 1^{er} octobre 1989 pour une période de trois ans. Reçue au barreau en 1979, elle a représenté des travailleurs blessés et, au cours des deux années précédant sa nomination, elle était enquêteuse au Bureau de l'ombudsman. Le poste de président suppléant, qui n'est pas défini dans la Loi, est un poste créé par le président afin de répartir la charge administrative et de gestion qui revient au Bureau du président. Le titre a été choisi pour refléter la nature principale du poste et le fait que le titulaire est aussi le vice-président désigné par le président - conformément aux stipulations de la Loi à cet égard - pour agir en qualité de président en cas d'empêchement de ce dernier et lorsque ce dernier est absent de la province. Comme le président, le président suppléant joue un rôle administratif et de nature judiciaire.

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

TROISIÈME RAPPORT

ANNEXE B

LES MEMBRES DU TRIBUNAL

AU COURS DE LA PÉRIODE VISÉE PAR LE RAPPORT

financière de manière à ne dépenser que les fonds nécessaires à l'exécution de son mandat et à l'atteinte de ses objectifs.

Ce document reflète la compréhension que le Tribunal a acquise de son mandat, de ses objectifs et de sa prise d'engagements depuis sa création*. Le Tribunal a approuvé le libellé des présentes le 1^{er} octobre 1988.

* La seule exception est l'objectif n° 1. Le temps de traitement visé était initialement de six mois.

ANNEXE A

9. Le Tribunal s'engage à faire tout son possible pour que ses décisions se conforment raisonnablement aux critères de qualité suivants:

- (a) Elles tiennent compte de toutes les questions pertinentes soulevées par les faits présentés.
- (b) Elles présentent clairement les preuves sur lesquelles le jury s'est fondé pour prendre sa décision.
- (c) Elles n'entrent pas en contradiction avec les décisions antérieures du Tribunal relativement aux questions juridiques ou médicales générales, à moins que le désaccord ne soit présenté explicitement et que ses motifs ne soient expliqués.

(d) Elles présentent le raisonnement du jury de façon claire et compréhensible.

(e) Elles répondent à des normes raisonnables de compréhension.

(f) Elles respectent les normes que le Tribunal s'est imposées quant au format des décisions.

(g) Elles renferment une terminologie technique et juridique uniforme d'une décision à l'autre.

(h) Elles s'insèrent de façon appropriée dans l'ensemble des décisions du Tribunal, ensemble

de décisions qui doit être, autant que possible, cohérent.

(i) Elles ne perpétuent pas de conflits à l'égard de questions non litigieuses de nature

juridique ou médicale. De tels conflits, qui peuvent survenir pendant le développement de points litigieux, ne peuvent caractériser l'ensemble des décisions du Tribunal à long terme.

(j) Elles se conforment aux lois applicables et à la common law et reflètent adéquatement

l'engagement du Tribunal envers la primauté du droit.

(k) Elles contribuent à former un ensemble de décisions auquel il est possible d'avoir recours pour comprendre et se préparer à traiter les questions soulevées dans de nouveaux cas et pour se prévaloir de l'important principe selon lequel des cas de même nature devraient être traités de la même manière.

10. Le Tribunal s'engage à obtenir, pour chacun de ses cas, toutes les preuves qui peuvent être obtenues par des moyens raisonnables et dont les jurys peuvent avoir besoin pour assurer la justesse de leurs décisions quand il s'agit de questions médicales ou factuelles.

11. Le Tribunal s'engage à tenir les audiences qui ont lieu hors de Toronto dans des lieux appropriés.

Ainsi, les cas provenant de l'extérieur de Toronto devraient être entendus dans des lieux convenant autant que possible au travailleur et à l'employeur. Cet engagement sera respecté dans la mesure où il n'entraînera pas de frais de déplacement des membres du Tribunal ou de frais administratifs tels qu'ils nuiraient au bon fonctionnement du Tribunal.

12. Le Tribunal s'engage à prendre en charge les dépenses engagées par les personnes qui participent à ses audiences et à leur verser des indemnités de perte de salaire conformément aux lignes directrices de la CAT en ce qui concerne la participation aux affaires qu'elle instruit.

13. Le Tribunal s'engage à payer les rapports médicaux jugés utiles lors des affaires qu'il instruit.

14. Le Tribunal s'engage à administrer ses dépenses en faisant preuve d'un sens de responsabilité

Etant donné que le Tribunal s'est engagé à garder ses travaux d'enquête et de préparation aux audiences à l'écart de ses travaux de prise de décision, c'est le BCJT qui exerce ce contrôle, conformément à des directives qui lui sont transmises de la manière expliquée ci-dessus. (Cet engagement n'exclut pas les variations stratégiques dans le degré de contrôle avant l'audience et la portée de l'initiative du BCJT dans la préparation des audiences, en ce qui a trait aux différentes catégories de cas. Cet engagement permet aussi de ne pas soumettre certains cas peu compliqués au contrôle du BCJT.)

Il est bien entendu que le rôle du BCJT avant l'audience ne diminue en rien les attributions et les obligations inhérentes des jurys en ce qui concerne l'audience et le jugement de chaque cas distinct. Il appartient aux jurys d'audience d'identifier les questions en litige; ils sont en droit, à mi-audience ou au cours des étapes ultérieures, d'entreprendre et de superviser l'élaboration ou la recherche de preuves supplémentaires, d'obtenir l'exécution d'autres enquêtes judiciaires et de demander la soumission d'autres renseignements lors de l'audience.

3. Le Tribunal s'engage à se faire représenter par son propre conseiller juridique à toute audience quand il estime une telle représentation nécessaire ou utile.

4. Le Tribunal s'engage à entretenir, dans ses travaux internes de prise de décision, une atmosphère de travail tripartite caractérisée par le respect mutuel et par une liberté d'expression fondée sur l'impartialité et l'exercice du meilleur jugement de tous les membres de ses jurys.

5. Le Tribunal s'engage à maintenir des programmes de formation internes favorisant, à l'échelle du Tribunal tout entier, la compréhension de la nature et des différents aspects des questions qui peuvent surgir, des questions générales, médicales, juridiques ou ayant trait à la procédure adoptée.

6. Le Tribunal s'engage à établir et à maintenir un centre d'information et une bibliothèque touchant aux sujets se rapportant à l'indemnisation des travailleurs en général.

Ce centre et cette bibliothèque deviendront une source efficace et suffisante de renseignements juridiques et médicaux ainsi que de faits concrets sur l'indemnisation des travailleurs qu'il serait difficile de réunir autrement. Ils permettront aux travailleurs, aux employeurs, au public, aux représentants professionnels ainsi qu'aux membres et au personnel du Tribunal d'obtenir les renseignements dont ils ont besoin pour bien comprendre le système d'indemnisation des travailleurs et les questions qu'il soulève, et de se préparer à traiter lesdites questions dans le cadre de cas spécifiques.

On pourra facilement accéder à ces sources d'information par divers moyens, dont l'utilisation de matériel électronique.

7. Le Tribunal s'engage à créer un registre permanent de ses travaux distribué à grande échelle et facilement accessible.

Ce registre comprendra les décisions du Tribunal jugées les plus susceptibles d'aider les représentants des travailleurs ou des employeurs à comprendre, lors de la préparation de leurs cas, les questions relatives à l'indemnisation des travailleurs et la position que le Tribunal est en train de prendre à cet égard.

8. Le Tribunal s'engage à faire examiner les décisions des jurys par le président ou par le Bureau du conseiller du président avant d'en émettre la version finale. Cet examen vise à assurer, dans la mesure du possible et compte tenu de l'autonomie prépondérante du jury d'audience, que les décisions du Tribunal sont à la hauteur des critères de qualité adoptés par le Tribunal.

5. Maintenir en tout temps un nombre suffisant de vice-présidents et de membres qualifiés, compétents, bien formés et motivés.

6. Maintenir en tout temps une liste suffisante de médecins-conseil compétents et motivés.

7. Maintenir en tout temps un personnel de soutien, administratif et professionnel, qui soit à la fois qualifié, compétent, bien formé et motivé.

8. Fournir aux vice-présidents, aux membres et au personnel les installations, le matériel et les services administratifs pour qu'ils puissent s'acquitter efficacement de leurs responsabilités tout en ayant la satisfaction d'un travail bien fait, à la hauteur de leurs aspirations professionnelles.

9. Rémunérer les employés de manière équitable et concurrentielle en fonction de leurs responsabilités et de la nature de leur travail, tout en respectant les limites implicites découlant de l'obligation statuaire qu'a le président de suivre les directives administrative du gouvernement en ce qui a trait à l'établissement des catégories d'emplois, des salaires et des bénéfices marginaux.

10. Entretenir des relations professionnelles constructives et appropriées avec le corps médical et ses membres, en général, et avec les évaluateurs médicaux du Tribunal, en particulier.

11. Entretenir des relations professionnelles constructives et appropriées avec la Commission, son personnel et son conseil d'administration.

12. Entretenir des relations professionnelles constructives et appropriées avec le ministère du Travail et son ministre, et avec tout autre organisme gouvernemental avec lequel le Tribunal est appelé à traiter de temps à autre.

13. Renseigner le public, et surtout les travailleurs, les employeurs ainsi que leurs groupements représentatifs respectifs, sur le Tribunal et son fonctionnement de manière à ce qu'ils puissent se prévaloir efficacement de ses services.

LA PRISE D'ENGAGEMENTS

En s'acquittant de son mandat et en poursuivant ses objectifs, le Tribunal a pu juger de l'importance d'un certain nombre de questions, à l'égard desquelles il a pris des engagements formels.

1. Le Tribunal prend l'engagement de garder ses enquêtes et ses travaux de préparation aux audiences à l'écart de ses travaux de prise de décision.

Il respecte cet engagement grâce à un service permanent composé d'un personnel à plein temps - le Bureau des conseillers juridiques du Tribunal (BCJT). La tâche du BCJT, en la circonstance, est d'effectuer les travaux d'enquête et de préparation aux audiences en suivant les directives générales du Tribunal. Lorsque lesdites directives semblent insuffisantes pour guider les travaux d'enquête et de préparations pour l'audience d'un cas spécifique, le BCJT obtient des directives spéciales des jurys du Tribunal. Les membres desdits jurys sont alors exclus de l'audience et du processus de prise de décision du cas en question.

2. Le Tribunal s'engage à exercer un contrôle sur l'identification des questions en litige et à déterminer s'il y a assez de preuves à l'étape précédant l'audience.

Elle doit fournir aux jurys du Tribunal les preuves, les moyens d'évaluer lesdites preuves et la compréhension des questions examinées afin qu'ils puissent juger en toute confiance du bien-fondé du cas.

(e) La procédure ne doit pas être plus compliquée, réglementée ou solennelle (et, par conséquent, pas plus intimidante pour les profanes) que ne l'exigent les besoins d'efficacité et d'équité.

(f) Après l'audience, le processus de prise de décision doit fournir le terrain à une prise de décision tripartite efficace et à l'élaboration soignée de décisions appropriées.

Pour être appropriées, les décisions doivent être écrites et pleinement raisonnées. Elles doivent respecter le principe de la légalité et répondre à des normes raisonnables et générales de qualité. Elles doivent se conformer à la lettre de la loi applicable et tenir compte des autres décisions rendues par le Tribunal. Il faut en effet que l'objectif soit d'arriver à des conclusions semblables dans la résolution de litiges similaires.

4. Bien qu'elle doive généralement se conformer à ce qui précède, la procédure de traitement des demandes d'autorisation d'interjeter appel, telles qu'elles se distinguent des appels, doit être soumise aux changements que peuvent prévoir les dispositions statutaires régissant chacune des différentes demandes.

5. Le Tribunal doit tenir ses audiences et rendre ses décisions dans un délai aussi raisonnable que possible, compte tenu des contraintes découlant de la procédure qui précède.

6. Le Tribunal doit faire en sorte que le public puisse consulter toutes ses décisions.

7. Le Tribunal doit, dans la mesure du possible, offrir ses services en français et en anglais.

LES OBJECTIFS

Pour mener à bien son mandat, le Tribunal s'est fixé les objectifs suivants:

1. Parvenir à un temps de traitement des cas, depuis l'avis d'appel ou la demande jusqu'à la décision finale, d'une durée moyenne de quatre mois et maximale de six mois par cas, exception faite des cas particulièrement complexes ou difficiles.

2. Fournir un système pouvant, dans la mesure du possible, lui permettre de remplir ses obligations statutaires implicites, quelles que soient l'expérience et les capacités du représentant du travailleur ou de l'employeur dans un cas particulier ou en dépit de la non-participation de toute partie ou de tout représentant.

3. Procurer un environnement professionnel qui soit accueillant et compréhensif tout en étant positif et rassurant à tous les points de contact entre le Tribunal, les travailleurs, les employeurs et leurs représentants. Cet environnement doit refléter la manifestation d'un respect implicite de tout le personnel et de tous les membres du Tribunal envers les buts et les motifs des travailleurs et des employeurs dont les cas sont soumis à l'examen du Tribunal et envers l'importance du travail qu'effectue le Tribunal en leur nom.

4. Maintenir un environnement qui soit stimulant pour les employés du Tribunal et qui leur offre des occasions de faire reconnaître leurs mérites personnels, de se perfectionner et d'obtenir de l'avancement, dans une atmosphère de respect mutuel.

Le fait que le système soit investi de la responsabilité première à cet égard est reflété dans les mandats explicites d'investigation de la Commission et du Tribunal et dans leurs obligations statutaires respectives de décider des cas en fonction de leur bien-fondé réel et de la justice.

En termes juridiques, la procédure du Tribunal peut être qualifiée d'"inquisitoriale" plutôt que d'"antagoniste".

En dépit de la nature non antagoniste ou inquisitoriale de cette procédure, les audiences du Tribunal prennent normalement la forme d'audiences tenues dans le cadre d'une procédure antagoniste typique. En raison de ses caractéristiques essentiellement antagonistes, il est difficile pour le non-initié de saisir la nature fondamentale de la procédure du Tribunal. Cependant, la forme antagoniste d'audience reflète simplement le fait que le Tribunal reconnaît tacitement que la participation des parties permettra de répondre aux attentes entretenues à cet égard et s'avèrera également la façon la plus efficace et la plus satisfaisante pour ces parties d'aider le Tribunal dans sa quête du bien-fondé réel et de la justice.

Dans le cadre d'une procédure non antagoniste, l'engagement du Tribunal à l'égard des audiences, qui ont un format essentiellement antagoniste, est aussi appuyé par le concept "d'audience" dans le système juridique canadien. Ce système juridique considère que les principes d'impartialité et de loyauté dans les cas où l'audience constitue un droit, comme c'est le cas ici, sont tels qu'ils ne permettraient pas légalement, même dans le cadre d'une procédure non antagoniste, de s'écarter de la forme correspondant à la procédure antagoniste).

(b) La nature non antagoniste de la procédure du Tribunal exige le respect des trois exigences particulièrement importantes qui suivent:

(i) Les jurys d'audience du Tribunal doivent prendre toutes les mesures qu'ils estiment nécessaires pour se convaincre qu'ils possèdent, dans le cadre de toute affaire, toutes les preuves disponibles dont ils ont besoin pour être certains de pouvoir en juger le bien-fondé.

(ii) Dans toute affaire, les questions en litige doivent être déterminées par les jurys d'audience et non dictées par les parties.

(iii) Bien qu'elles soient réglementées et normalisées, les modalités d'audience doivent se prêter aux modifications spéciales que le jury considère nécessaires ou souhaitables dans le cadre de toute affaire particulière. Toute adaptation du genre doit, toutefois, permettre une audience équitable et refléter un souci profond d'intégrité dans l'application des règles et des règlements généraux du Tribunal qui contribuent, dans l'ensemble, à une procédure efficace et juste.

(c) La procédure de jugement doit être perçue comme étant efficace et équitable par les parties.

Elle doit fournir aux parties une connaissance opportune des questions en cause, une bonne occasion de récuser les preuves examinées, d'en soumettre de nouvelles ou de fournir leurs propres preuves, de présenter leur point de vue et de manifester leur opposition à l'égard des points de vue exprimés par la partie adverse.

(d) La procédure doit aussi être perçue par le Tribunal comme étant efficace.

ÉNONCÉ DU MANDAT, DES OBJECTIFS ET DE LA PRISE D'ENGAGEMENTS

LE MANDAT

Le mandat le plus fondamental du Tribunal est de s'acquitter de façon appropriée des obligations que lui confère la *Loi sur les accidents du travail*.

Ces obligations sont d'ordre explicite et implicite. Les obligations explicites, soit celles qui définissent ce que le Tribunal doit faire, sont en général énoncées clairement et n'ont donc pas à être répétées ici.

Les obligations implicites, soit celles qui déterminent le fonctionnement du Tribunal sont, par définition, sujettes à l'interprétation et au débat. Il est donc important que le Tribunal fasse connaître la perception qu'il a de ces dernières obligations.

Comme le Tribunal les comprend, les obligations statutaires implicites peuvent être décrites en ces termes:

1. Le Tribunal doit être compétent, impartial et équitable.

2. Le Tribunal doit être indépendant.

Cette indépendance se définit de trois façons:

(a) Le maintien de transactions juridiques fondées rigoureusement sur la lettre du droit et l'indépendance à l'égard de la Commission des accidents du travail.

(b) L'engagement de la part du président, des vice-présidents et des membres de ne pas se laisser indûment influencer par les opinions des employeurs ou des travailleurs.

(c) L'engagement de la part du président, des vice-présidents et des membres de rester fermes devant la possibilité d'une désapprobation des autorités gouvernementales.

3. Le Tribunal doit avoir recours à un processus de prise de décision approprié. À ce titre, le Tribunal croit qu'un tel processus doit se conformer aux concepts fondamentaux suivants:

(a) Le processus doit être reconnu comme étant non antagoniste, dans le sens généralement donné à ce concept dans le contexte de la common law.

(Contrairement à ce qui se passe en cour, le Tribunal n'a pas pour fonction de résoudre un différend entre des parties privées. L'interjection d'appel au Tribunal constitue une étape de l'enquête sur les droits et les prestations statutaires d'une personne victime d'une lésion professionnelle à l'intérieur du système d'indemnisation des travailleurs.

Il s'agit d'une étape à laquelle le travailleur ou l'employeur peut avoir recours mais pendant laquelle, comme au cours des étapes initiales, il incombe au système de déterminer ce que la Loi prévoit ou ne prévoit pas dans le cas d'un accident quel qu'il soit.

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL
TROISIÈME RAPPORT
ANNEXE A
ÉNONCÉ DU MANDAT, DES OBJECTIFS
ET DE LA PRISE D'ENGAGEMENTS

En 1988, le Comité s'est surtout consacré à surveiller le contrôle du budget de l'exercice 1988-1989, à convertir l'exercice du Tribunal de façon à ce qu'il coïncide avec l'année civile à compter du 1^{er} janvier 1989 et à dresser le budget de 1989.

On trouvera des renseignements détaillés sur le budget visant la période de neuf mois de l'exercice 1988-1989 à l'*Annexe F*.

2. Préparation du budget de 1989

La préparation du budget de 1989 a comporté un examen approfondi du budget au cours duquel le Comité des finances et de l'administration a passé au peigne fin les présentations budgétaires des différents services, ce qui lui a permis d'établir un budget provisoire. Ce budget a été soumis à un examen minutieux d'une semaine par un comité extraordinaire, composé du président du Tribunal, du président suppléant, du directeur général, des chefs de services, des membres du Comité des finances et de l'administration et du Comité de direction ainsi que des présidents de tous les comités permanents. En septembre 1988, le Tribunal a soumis son budget définitif au ministre du Travail aux fins d'approbation.

En dépit de l'effort énorme déployé en vue de maintenir l'augmentation du budget à seulement 4 pour cent, une augmentation de 4,6 pour cent s'est avérée nécessaire. Les dépenses de fonctionnement s'élèvent à 8,76 millions comparativement à 8,38 millions dans le budget de l'exercice 1988-1989. Le ministre a approuvé le budget tel qu'il lui avait été soumis.

3. Vérifications

Le Tribunal a été informé que le personnel de vérification interne du ministère du Travail se prépare à procéder à une vérification de gestion au Tribunal d'appel en 1989.

En 1988, le cabinet comptable Touche Ross a mené une vérification des dépenses engagées pendant l'exercice 1987-1988, conformément aux arrangements prévus dans le protocole d'entente conclu avec le bureau du vérificateur provincial. Le même cabinet comptable vérifiera les dépenses engagées pendant l'exercice de neuf mois terminé le 31 décembre 1988. Les rapports de cette vérification, qui n'étaient pas disponibles au moment de la publication du présent rapport, seront présentés dans les rapports à venir.

4. États financiers des périodes allant du 1^{er} avril 1987 au 30 mars 1988 et du 1^{er} avril 1988 au 31 décembre 1988

Ces états financiers se trouvent à l'*Annexe F*.

Pour déterminer si le travail constituait bien un tel facteur, la majorité du jury a proposé de procéder à l'enquête à deux volets suivante:

(a) Le travailleur était-il soumis à un stress professionnel indiscutablement supérieur à celui ressenti par le travailleur moyen?

(b) Si tel n'était pas le cas, existe-t-il des preuves manifestes et convaincantes que le stress ordinaire et habituel relié au lieu de travail a joué un rôle prépondérant dans la lésion?

La majorité du jury a conclu que les preuves n'avaient pas formellement démontré que le stress relié au lieu de travail avait causé l'invalidité. La minorité du jury a perçu les preuves différemment et s'est demandé si la majorité du jury s'en était bien tenue à la norme traditionnelle requise pour trancher un cas.

5. Les problèmes de délais

Le Tribunal s'est aussi penché sur les difficultés que pose l'absence de limites et sur l'effet des changements apportés au libellé de la Loi. La *Décision n° 483/88* (18 novembre 1988) traite des difficultés particulières à un accident mortel qui n'avait pas fait l'objet d'une enquête intégrale lorsqu'il était survenu en 1927, et a conclu qu'une orpheline, qui n'avait jamais connu son père, avait droit à une indemnisation. Dans la *Décision n° 765* (3 octobre 1988), le jury a analysé les complications juridiques entraînées par une modification de la Loi ayant effet sur la situation d'un travailleur et s'est demandé si ladite modification devait avoir un effet rétroactif ou rétrospectif. La *Décision n° 9154* revoit la common law de la rétroactivité et ses effets sur les positions médicales et légales acceptées auparavant.

6. Article 15 - Le droit d'intenter une action

Enfin, il convient de mentionner la jurisprudence du Tribunal en ce qui concerne la suppression du droit d'intenter une action. Dans les *Décisions n°s 490/881* (2 août 1988) et *485/88* (28 octobre 1988), les jurys ont considéré les définitions légales des expressions "personnes à charge" et "membres de la famille". Ils y ont aussi examiné s'il était possible de supprimer les droits d'intenter une action d'une personne, même si elle n'était pas admissible à recevoir des indemnités. Dans les *Décisions n°s 432/88* (5 octobre 1988), *965/871* (20 mai 1988), *1266/87* (11 mai 1988), *503/87* (16 mai 1988), *259/88* (22 juin 1988) et d'autres, le Tribunal a aussi examiné l'effet de la Loi et d'autres causes d'action possibles, telles que les demandes relatives à la responsabilité découlant du vice d'un produit, à la responsabilité des occupants, à l'observation d'un contrat ou à des dommages matériels.

7. Autres

Au cours de la période visée par ce rapport, le Tribunal s'est aussi penché sur l'indemnisation des travailleurs frappés d'une crise cardiaque sur les lieux de travail; sur les conséquences de la compréhension du concept "arriver du fait et au cours de l'emploi" dans diverses situations; sur la difficulté de distinguer les cas de douleur chronique de ceux relevant de la psychologie; sur les difficultés qui se présentent dans les cas des logements provisoires sur les lieux de travail; sur les problèmes continus des accidents qui surviennent dans les terrains de stationnement; etc.

L LES QUESTIONS FINANCIÈRES

1. Le Comité des finances et de l'administration

Le Comité des finances et de l'administration est un comité permanent tripartite du Tribunal. Ce comité, qui est actuellement présidé par un membre représentant les employeurs, supervise nos finances avec prudence.

reporter aux *Décisions* n°s 670/87 (19 août 1987), 638/88 (9 novembre 1988) et 510/88 (9 novembre 1988).

3. Maladie professionnelle

Le Tribunal a aussi été saisi de nombreux cas portant sur des invalidités résultant de l'exposition à des produits chimiques ou à certains procédés. Les jurys ont conclu qu'ils pouvaient examiner ces cas de deux manières, soit en vertu de la définition légale de l'expression "maladie professionnelle" et des dispositions qui y sont reliées, soit en les traitant comme une "incapacité" survenant du fait et au cours de l'emploi. Comme il est indiqué dans la *Décision* n° 850 (2 mars 1988), la définition légale de "maladie industrielle" semble reposer sur une analyse médicale et scientifique complexe visant à déterminer si la maladie est directement reliée à un procédé particulier. Le Tribunal estime généralement que le Comité des normes en matière de maladies professionnelles est plus en mesure d'examiner de telles questions, et il préfère se concentrer sur le concept d'incapacité en relation avec les maladies industrielles. On peut obtenir d'intéressants exemples de cette approche en consultant la *Décision* n° 31/88 (30 novembre 1988), portant sur un cas de "cocktail chimique", la *Décision* n° 214/88 (13 mai 1988), portant sur un cas de syndrome "d'édifice scellé" et la *Décision* n° 1296/87 (20 mai 1988), portant sur un cas de cancer du poumon et d'exposition au chrome.

Dans le cas de telles maladies, le Tribunal a recours au test habituel en déterminant si l'emploi du travailleur a contribué notablement à son invalidité. Par conséquent, un travailleur qui fume et contracte un cancer du poumon aura quand même droit à une indemnisation si son travail constituait aussi un important facteur dans son état de santé. Se reporter à la *Décision* n° 1296/87 (20 mai 1988). Toutefois, le Tribunal a refusé le droit à une indemnisation dans des cas du même genre lorsqu'il ne disposait que de preuves tout au plus équivoques indiquant que le lieu de travail avait contribué à l'état du travailleur. Se reporter à la *Décision* n° 138/87 (1^{er} avril 1988).

La *Décision* n° 421/87 (22 avril 1988) est l'une des rares décisions qui aient nécessité l'examen des dispositions légales régissant les "maladies industrielles" et l'effet de la disposition de présomption du paragraphe 122(9) sur les cas de "maladies industrielles" inscrites à l'annexe 3. Cette décision comporte un intéressant examen des différences entre les acceptions médicale et juridique du concept de causalité.

Les dispositions légales régissant le droit à un avis dans les cas de "maladies industrielles" sont examinées dans la *Décision* n° 140/87 (15 novembre 1988)

4. Le stress professionnel

Le stress professionnel est une question connexe qui a fait l'objet d'une certaine publicité. Un certain nombre de décisions indiquent que les invalidités causées par le stress professionnel ne sont pas, en principe, rejetées du système d'indemnisation; aucun cas du genre, où le stress représente l'unique raison de l'appel, n'a cependant été accueilli pendant la période visée par le présent rapport. Dans la *Décision* n° 828 (9 janvier 1987), le stress n'était que l'un des nombreux facteurs professionnels impliqués.

C'est la *Décision* n° 918 (8 juillet 1988) qui comporte l'examen le plus exhaustif du stress professionnel. Le jury chargé du cas en question a conclu que le stress pouvait donner lieu à une indemnisation sous le concept de "maladie industrielle" ou sous celui d'"incapacité". Encore là, le jury a décidé d'analyser le cas en le traitant sous le concept d'"incapacité" étant donné que la définition légale de "maladie industrielle" requiert beaucoup plus de preuves. La majorité du jury a souligné qu'il était difficile de prouver que le travail constituait un important facteur contribuant au stress mental, étant donné les nombreuses sources de stress non reliées au travail.

en grand nombre. Plus de 31 personnes ont profité de ces cours, qui sont offerts à l'heure du déjeuner et dans la soirée.

Le Tribunal a aussi embauché un commis bilingue, préposé à la réception des nouveaux dossiers, qui a pour tâche d'aider à répondre aux demandes de renseignements adressées en français aux services d'accueil et de réception des nouveaux dossiers. Une secrétaire bilingue attachée au Bureau du président et un avocat bilingue au Bureau des conseillers juridiques font aussi partie du personnel du Tribunal.

K LES QUESTIONS DE FOND TRAITÉES AU COURS DE LA PÉRIODE VISÉE

Étant donné la taille du présent rapport, nous ne pouvons passer ici en revue toutes les questions importantes d'ordre juridique, factuelle et médicale que le Tribunal a traitées au cours des 15 derniers mois. Les paragraphes qui suivent ne donnent donc qu'une simple indication de la diversité et de la nature des problèmes examinés pendant cette période.

1. Évaluation des pensions

Pour la première fois, le Tribunal a été saisi de cas portant sur la justesse des évaluations aux fins de pension. Les problèmes inhérents auxquels se sont alors heurtés les jurys sont examinés dans la *Décision* n° 915 (22 mai 1987). Les jurys acquiescent toutefois de plus en plus d'expérience dans ce domaine.

En règle générale, ils déterminent le degré d'invalidité au moment pertinent, comparent leurs constatations à celles de la Commission et déterminent si cette dernière a bien appliqué le barème de taux dans le cas en question. Se reporter à la *Décision* n° 381/88 (2 septembre 1988). Toutefois, comme il est indiqué dans la *Décision* n° 255/88 (19 mai 1988), la stratégie d'examen adoptée doit convenir aux circonstances et aux faits particuliers à chaque cas examiné.

Des évaluations aux fins de pension ont été confirmées dans de nombreux cas où les preuves médicales indépendantes appuyaient les évaluations de la Commission. Se reporter aux *Décisions* nos 282/88 (25 mai 1988) et 255/88 (19 mai 1988). Dans la *Décision* n° 582/88 (7 décembre 1988), le jury a toutefois jugé que l'évaluation n'avait pas suffisamment tenu compte du rôle de l'accident du travail dans l'aggravation d'un état préexistant dont le travailleur était atteint. De même, dans la *Décision* n° 603/88 (13 octobre 1988), le jury a ordonné une nouvelle évaluation parce que la Commission avait négligé deux aspects de l'invalidité du travailleur.

2. Suppléments de pension

Le Tribunal est généralement d'avis que les circonstances pouvant modifier l'effet d'une lésion sur la capacité de gain d'un travailleur particulier doivent être ignorées lors du calcul des pensions d'invalidité permanente. Elles seront ensuite prises en considération en vertu des dispositions régissant les suppléments temporaires et les suppléments pour travailleurs plus âgés. Dans la *Décision* n° 447/87 (8 février 1988), rendue sur l'un des premiers cas de supplément, le jury a estimé que la Commission n'avait peut-être pas le pouvoir discrétionnaire de refuser un supplément temporaire à un travailleur qui n'a pas négligé de collaborer ou de se rendre disponible pour un emploi correspondant à ses aptitudes. Toutefois, dans des cas plus récents - *Décision* n° 124/88 (28 juillet 1988), *Décision* 212/88 (22 août 1988) et *Décision* n° 349/88 (27 juillet 1988) -, les jurys ont préféré les analyses établies dans la *Décision* n° 915 et ont jugé que la Commission était investie d'un tel pouvoir discrétionnaire. Pourtant, lorsque la Commission n'offre pas de programmes de réadaptation professionnelle, le travailleur peut avoir droit à un tel supplément s'il agit de manière à diminuer son invalidité et à augmenter ses chances de retour au travail. Se reporter à la *Décision* n° 548/87 (21 juillet 1987) pour obtenir un exemple. D'autres décisions traitent de questions liées à la capacité de gain du travailleur. Se

I LE RAYONNEMENT ET LA FORMATION

Conformément à son engagement en ce sens, le Tribunal d'appel aide toujours les travailleurs et le patronat à comprendre son rôle et leur offre des activités de formation pour qu'ils soient mieux préparés à jouer leur rôle dans le système d'appel. Le Comité de rayonnement et de formation, un comité tripartite composé de membres de jurys et d'employés de soutien, continue à être invité à prendre la parole à des conférences et à prendre part à des ateliers et à des colloques.

L'année passée, le Tribunal a déployé encore plus d'efforts afin de respecter son engagement à l'égard de la formation du public. Il a aussi modifié ses méthodes afin de pouvoir atteindre un auditoire aussi vaste que possible. Il a entre autres produit un film sur bande magnétoscopique présentant une audience simulée du Tribunal. Préparé par des professionnels à partir de différents cas portant sur le droit à des indemnités, le film présente les faits saillants d'une audience type du Tribunal d'appel. Une trousse pédagogique composée d'un fac-similé d'une description de cas et d'exercices écrits accompagne la bande magnétoscopique. On peut emprunter ce film, intitulé "*Final Appeal*", en s'adressant à la bibliothèque du Tribunal d'appel. En outre, le Comité de rayonnement et de formation se tient à la disposition de tout groupe qui serait intéressé à entendre un exposé basé sur le film ou portant sur tout autre aspect du travail du Tribunal.

Le film en question, qui a été présenté un peu partout dans la province à l'occasion de conférences et de colloques, a jusqu'à maintenant suscité une réaction très positive de la part de tous les auditoires. Il permet en particulier aux auditoires peu familiers avec le système d'appel du Tribunal d'acquiescer une connaissance élémentaire de sa procédure. Les auditoires qui possèdent déjà un bon bagage de connaissances dans le domaine l'utilisent dans le cadre de discussions portant sur des aspects particuliers du processus ou pour améliorer leurs propres aptitudes d'intervenants.

J LES SERVICES EN FRANÇAIS

Le Comité des services en français a entrepris de nombreux projets en 1988 afin de préparer le Tribunal à mettre la Loi sur les services en français en application, en novembre 1989. Pendant la période visée par ce rapport, le Tribunal a aussi été en mesure de tenir des audiences et de publier des décisions en français grâce à l'acquisition de ressources en français et à l'apport de membres bilingues nommés par décret.

Le Tribunal estime maintenant devoir retenir les services d'un traducteur-réviseur à plein temps qui verra à la traduction en français de descriptions de cas, de décisions, de documents destinés au public et de son rapport annuel. Pour le moment, la majeure partie de ce travail est effectuée par des traducteurs de l'extérieur et des experts-conseil. Un traducteur-réviseur devrait entrer en fonction au Tribunal au début de 1989.

Le Tribunal a fait tout le nécessaire pour produire un bon éventail de documents de base en français en faisant traduire son Deuxième rapport, les directives de procédure nos 1 à 9 et l'énoncé de son mandat, ainsi que pour assurer l'émission rapide des décisions rendues en français. Un lexique de la terminologie juridique et médicale particulière à ses décisions est actuellement en cours de préparation.

Le Tribunal a également offert des cours de français réguliers aux niveaux débutant, intermédiaire et avancé auxquels ses membres nommés par décret et son personnel ont participé

Le Service des publications offrent aussi de nombreux index: *The Keyword Index* - un index alphabétique par sujet; *The Numerical Index/Annotated Statute* - un index numérique de mots-clés et de sommaires de toutes les décisions, accompagnés d'une liste des décisions en vertu des articles de la Loi sur les accidents du travail et des règlements auxquels elles se rapportent; *Section 15 Index* - un index spécialisé des décisions du Tribunal et des causes judiciaires relatives au droit d'intenter une action civile; *The Master List of Decisions* - une liste de toutes les décisions indiquant la date et les coordonnées de référence dans le Reporter et l'index numérique. Ces index sont produits tous les deux mois, et on peut les obtenir moyennant une légère redevance.

La publication *Compensation Appeals Forum* sur les appels en matière d'accidents du travail est une revue dans laquelle les employeurs, les travailleurs et d'autres groupes peuvent faire paraître leurs analyses des décisions et des procédures du Tribunal et des principes généraux d'indemnisation ainsi que leurs commentaires sur ces sujets. Cette publication est parue pour la première fois en octobre 1986. Depuis lors, d'autres numéros ont été publiés, et le dernier date de juillet 1988. En 1989, le service prévoit publier deux nouveaux numéros de cette publication, qui est distribuée gratuitement.

La bibliothèque et le Service des publications ont récemment pris une nouvelle mesure pour rendre l'information encore plus accessible. En effet, faisant équipe avec le personnel du Service de l'information et les représentants d'Infomart Inc., une entreprise spécialisée dans la gestion de dossiers, ils ont constitué et mis en service une base de données appelée WCAT ON LINE, fournissant le texte intégral des décisions du TAAAT, intégrée à un système doté de capacités de recherche d'une puissance et d'une portée bien supérieures à celle du système précédent. Seuls les membres et le personnel du Tribunal peuvent utiliser cette base de données pour le moment, mais le public pourra s'en servir dès le début de 1989 grâce à l'accès électronique à distance.

H LA CHARGE DE TRAVAIL ET LA PRODUCTION

1. La charge de travail

Le Tribunal a été saisi en moyenne de 130 nouveaux cas par mois pendant la période visée par le présent rapport. Au cours des deux dernières années, le nombre de nouveaux cas a diminué progressivement de 8 pour cent par année.

On trouvera des renseignements détaillés sur la charge de travail à l'*Annexe D*.

2. La production du Tribunal

Pendant les 15 mois visés par ce rapport, le Tribunal a traité 2 441 cas. Ce chiffre inclut les cas qui ont requis une audience, ceux pour lesquels seuls des documents écrits ont été examinés, ceux qui ont fait l'objet d'une médiation et ceux qui ont été réglés au niveau administratif. A la fin de décembre 1988, 69 pour cent des 270 cas au stade postérieur à l'audience étaient des cas dont l'audience était récente (entre 0 et 4 mois).

En décembre, le taux de décisions rendues par rapport au nombre d'audiences tenues dans un même mois -- un indicateur approximatif de notre progression ou de notre régression -- s'était stabilisé à 127 pour cent. Au cours des derniers mois de la période visée par ce rapport, nous avons donc rendu environ 30 pour cent plus de décisions que nous avions tenu d'audiences. C'est donc dire que la durée du processus de décision s'améliore constamment.

On trouvera des renseignements détaillés sur la production du Tribunal aux *Annexes E et F*.

servant des nombreux livres, journaux et documents gouvernementaux de la bibliothèque et des dossiers verticaux qui sont mis à jour quotidiennement.

Les usagers de la bibliothèque peuvent aussi avoir recours à des services de recherche documentaire en direct, à des prêts interbibliothèques et aux ressources des bibliothèques du voisinage.

Dans ses classeurs verticaux, la bibliothèque offre une collection de documents choisis, comprenant des articles de journaux et des rapports sur de nombreux sujets pertinents aux questions que le Tribunal est appelé à traiter. Les classeurs verticaux, auxquels sont continuellement ajoutés de nouveaux documents, contiennent des documents d'actualité sur des sujets reliés à des demandes de recherche particulières ainsi que sur les articles des périodiques auxquels le Tribunal est abonné, classés par titre. Diverses bases de données servent régulièrement à des recherches aux fins de sensibilisation à des questions d'actualité.

Grâce au logiciel Cardbox Plus Database Management, le personnel de la bibliothèque peut fournir rapidement et facilement aux usagers l'accès aux documents figurant à l'index des classeurs verticaux et aux sommaires détaillés des décisions du Tribunal préparés par les avocats du Service d'information et portés à la base de données DECISIONS. En utilisant les deux micro-ordinateurs de la bibliothèque, le personnel et les usagers peuvent chercher et trier des données telles que les dates, les jurys, les citations juridiques et législatives, les mots-clés et la terminologie.

Par ailleurs, afin d'améliorer l'accès de l'extérieur, la bibliothèque a commencé à offrir les index de sa collection d'ouvrages aux autres organismes faisant partie du réseau national de la base de données du système de catalogage UTLAS et des exemplaires de ses bases de données.

Le personnel de la bibliothèque enseigne aux usagers comment utiliser le logiciel Cardbox et effectue de la recherche à leur intention sur place ou par téléphone. La bibliothèque fournit aussi, au besoin, des copies sur disquettes de la base de données des décisions que peuvent utiliser les usagers disposant du logiciel Cardbox Plus. Le Centre canadien de la santé et de la sécurité au travail s'est prévalu de ce service afin d'établir une partie de sa base de données CASELAW, à laquelle il est possible d'accéder grâce à son service de recherche documentaire en direct - CCINFO.

2. Les publications

Pendant la période visée par ce rapport, le Service d'information a assuré la production de publications régulières et nouvelles conçues pour rendre les décisions du Tribunal accessibles aux travailleurs, aux employeurs et à leurs représentants.

Les quatre premiers volumes du *Workers' Compensation Appeals Tribunal Reporter* ont été publiés pour le Tribunal par Carswell Legal Publications. Le *Reporter* se présente sous la forme de volumes, de la même taille que les recueils de jurisprudence, contenant le texte intégral de décisions choisies, accompagné de sommaires, d'un index de mots-clés préparé par le Service d'information, d'autres index et de divers tableaux. Au cours des deux prochaines années, le *Reporter* paraîtra à un rythme accéléré afin que le contenu en soit le plus actuel possible.

Le Service des publications continue à cataloguer et à produire les sommaires des décisions du Tribunal. Ces sommaires, qui sont annexés au texte intégral de toute décision demandée, constituent aussi une base de données individuelle parallèle.

Deux fois par mois, le Service d'abonnement aux décisions distribue des décisions choisies à ses abonnés. Quelles soient distribuées ou non par le Service d'abonnement, toutes les décisions peuvent être obtenues individuellement.

11. Le Bureau du conseiller juridique du président

Le Bureau du conseiller juridique du président continue à jouer un rôle important dans le maintien de l'uniformité et de la qualité des décisions du Tribunal en révisant les ébauches de décisions. Cette révision est en général faite par le conseiller avec, à l'occasion, la participation du président. Cette procédure a subi de légers changements depuis le Premier rapport, étant donné que les vice-présidents à plein temps sont désormais à l'aise avec la Loi sur les accidents du travail et les principes d'application et qu'ils n'ont plus besoin d'aide régulière. En conséquence, les ébauches de décisions préparées par les vice-présidents à plein temps ne sont revues qu'à leur demande expresse. Dans les autres cas, le processus de révision suit la même voie que celui indiqué dans le Premier rapport.

L'assistance apportée par le conseiller juridique du président est assez semblable à celle que les clercs d'avocat offrent aux juges des cours supérieures. Le conseiller attire l'attention des jurys sur les décisions importantes du Tribunal et sur les lois qui s'y rapportent. Si l'information offerte est d'importance, le jury la fera parvenir aux parties et les invitera à soumettre leurs observations. Le conseiller identifiera aussi les parties de l'ébauche qui semblent incomplètes ou vagues ainsi que les faiblesses du processus de prise de décision qu'une relecture de l'ébauche met en lumière.

Le Bureau du conseiller du président a soin de laisser la décision finale au jury. La principale raison d'être de cette révision est d'assurer que les décisions ne sont pas rendues dans l'isolement, qu'elles respectent les normes de qualité et que la jurisprudence du Tribunal forme un ensemble cohérent de décisions.

12. Les audiences à l'extérieur de Toronto

Pendant la période visée par le présent rapport, le Tribunal a tenu environ 40 pour cent de ses audiences à l'extérieur de Toronto, et les requêtes à cet effet ont augmenté de façon régulière. Près de 50 pour cent des cas proviennent actuellement de l'extérieur de Toronto. Le Tribunal examine divers moyens qui lui permettraient d'entendre plus rapidement ces cas, dont la possibilité de faire venir les parties à Toronto si les calendriers d'audience deviennent surchargés à certains endroits.

13. Représentation aux audiences

Les statistiques ayant trait aux types de représentation choisis par les travailleurs et les employeurs se trouvent à l'Annexe C.

G LE CENTRE D'INFORMATION

Le centre d'information qui met ses ressources au service du personnel du Tribunal et du public, relève du Service de l'information.

1. La bibliothèque

Au cours de ses deux premières années de fonctionnement, la bibliothèque a offert une grande variété de services à ses usagers tout en faisant face aux aléas de la période d'organisation. Pendant la troisième année, ses activités ont plutôt visé à rendre l'information et les ressources plus accessibles. Le personnel du Tribunal effectue de la recherche sur le droit administratif, le droit constitutionnel, le droit ou les principes directeurs en matière d'indemnisation des travailleurs accidentés et les questions médicales reliées aux cas dont le Tribunal est saisi en se

permettre au Bureau des conseillers juridiques du Tribunal de solliciter et d'obtenir des instructions concernant la préparation des cas pour les audiences. Cette façon de procéder s'avère toujours utile et compatible avec le modèle judiciaire adopté par le Tribunal d'appel. Les membres du Bureau peuvent consulter ces jurys (maintenant appelés jurys d'instruction) pour obtenir des instructions à différents égards, par exemple la nécessité de recommander un travailleur à un médecin pour qu'il subisse un examen avant l'audience.

À l'origine, la procédure de recours aux jurys-conseil au stade préalable à l'audience prévoyait que les parties qui contesteraient certaines instructions données au Bureau par un jury-conseil seraient invitées à consulter un autre jury-conseil et à lui présenter leurs observations en vue d'obtenir des instructions différentes. J'avais expliqué cet aspect de la procédure dans le Deuxième rapport.

L'expérience a toutefois démontré que les parties ne se prévalent pas beaucoup de la procédure de recours aux jurys-conseil.

En vue d'assurer que la préparation au stade préalable à l'audience s'accomplisse dans les délais prévus et que les décisions rendues tiennent suffisamment compte des exigences particulières à chaque cas, le Tribunal d'appel en est venu à renvoyer systématiquement au jury chargé de juger le cas toute question contentieuse se posant au stade préalable à l'audience. Le jury d'audience peut alors, à sa discrétion, entendre des observations et inscrire la question contentieuse en tant que question préliminaire avant d'examiner le fond de l'appel lors de l'audience ou choisir d'attendre la fin de l'audience pour résoudre la question.

Cette modification de la procédure a eu pour effet de permettre au Bureau des conseillers juridiques du Tribunal de préparer les cas de manière expéditive, d'utiliser le plus efficacement possible le temps du jury et d'assurer la prise de décisions vraiment appropriées à l'égard d'importantes questions soulevées au stade préalable à l'audience.

9. Inscription des audiences

Le Service d'inscription des audiences du Tribunal relève maintenant d'un administrateur des appels, qui a remplacé le coordonnateur des audiences. La titulaire du nouveau poste est chargée non seulement de l'inscription des audiences, mais aussi de régler les demandes d'ajournements, d'assignations, d'indemnités de témoin et toutes les questions reliées aux audiences.

À la fin de la période visée par ce rapport, le Service d'inscription, qui n'inscrivait auparavant les audiences qu'avec le consentement des parties, se préparait à commencer à les inscrire, sans consentement au besoin, dans les six semaines suivant la réception de la description de cas par les parties, afin de contribuer à l'atteinte de l'objectif de quatre mois.

10. L'objectif de quatre mois

Le Tribunal est résolu à entendre les parties en audience et à rendre ses décisions plus rapidement, sans sacrifier la qualité de son processus de décision. En conséquence, après nous être consacrés à la rationalisation de nos procédures internes, nous effectuons des changements en vue d'éliminer les périodes au cours desquelles les dossiers sont "en attente", de permettre à plusieurs services de travailler sur les dossiers en même temps, de limiter les temps morts entre la fin de la préparation au stade préalable à l'audience et la tenue de l'audience, de fournir des dates d'échéance précises avant lesquelles chaque service devra avoir terminé la tâche qui lui incombe. Les parties de ce rapport portant sur la rédaction des décisions, le rôle du Bureau des conseillers juridiques du Tribunal et le Service d'inscription des audiences fournissent de plus amples renseignements sur ces changements.

appel sont acheminées par courrier, par téléphone et quelquefois par la visite directe d'une personne qui apporte ses questions et ses préoccupations sur place. Dans ce dernier cas, un agent à la réception des nouveaux dossiers prend la personne en charge, discute avec elle de son problème et essaie de lui fournir toute l'aide possible. Au Tribunal, les préposés à l'accueil font partie intégrante du Service de réception des nouveaux dossiers compte tenu du vaste éventail de questions auxquelles ils doivent répondre concernant le processus d'appel.

8. Le Bureau des conseillers juridiques du Tribunal

Le rôle du Bureau des conseillers juridiques du Tribunal continue à évoluer. On convient maintenant que le Tribunal a besoin de ses propres conseillers et que ces derniers jouent un rôle important, tant au stade préalable que pendant les audiences.

(a) Son rôle au stade préalable à l'audience

Pendant la troisième année de fonctionnement du Tribunal, l'adoption de l'objectif de traitement complet de quatre mois a forcé le Bureau à modifier ses procédés administratifs au stade préalable à l'audience. Les descriptions de cas doivent maintenant être préparées conformément à un modèle établi, après quoi les dates d'audience sont immédiatement fixées. Des cadres supérieurs passent en revue les descriptions de cas pour vérifier les preuves médicales et déterminer s'il faut ajouter des renseignements factuels supplémentaires, effectuer d'autres recherches juridiques ou émettre d'autres observations.

Le Bureau des conseillers juridiques du Tribunal voit de plus en plus à la préparation et à la mise à jour de sommaires des décisions que rend le Tribunal à l'égard de questions particulières. Ces sommaires, appelés "revues des décisions", sont souvent distribués aux parties et aux jurys en tant qu'ouvrages de référence.

Le Bureau contribue toujours grandement à la qualité des travaux du Tribunal et à leur accessibilité en renseignant les parties et leurs représentants sur la procédure du Tribunal, sur les questions devant être traitées et sur les lois applicables.

(b) Son rôle pendant les audiences

La controverse que soulevait le rôle des conseillers juridiques du Tribunal lors des audiences se dissipe peu à peu. Il est rare que les conseillers aient à contre-interroger un témoin en cours d'audience. Lors des audiences, leur rôle se limite clairement à aider les jurys, ordinairement en orchestrant la marche des affaires instruites, en assurant que les dossiers sont complets ou en présentant des observations soulignant les analyses optionnelles que le jury pourrait prendre en considération.

Dans les cas exceptionnels mettant en jeu la compétence du Tribunal ou des questions qui l'intéresse particulièrement, les conseillers du Tribunal ont pour directive de défendre activement la position qu'il juge la plus appropriée du point de vue du Tribunal. Cet aspect de leur rôle a fait l'objet d'un examen dans la *Décision n° 1091/87* (2 décembre 1987) et dans la *Décision n° 212/881* (8 avril 1988).

(c) L'évolution de son rôle

Au Bureau des conseillers juridiques, comme partout ailleurs au Tribunal d'appel, l'engagement à l'égard du maintien de normes de qualité élevées continue à se heurter aux impératifs d'efficacité et de rapidité. C'est la tension qui existe entre ces critères de rendement qui continuera à exercer la plus grande influence sur l'évolution du Bureau au cours des années à venir.

Comme je l'expliquais dans le Deuxième rapport, le Tribunal d'appel a recours à des jurys dont le rôle se limite aux activités préalables à l'audience (autrefois appelés jurys-conseil) afin de

que la procédure du Tribunal se soit stabilisée après les nouveaux changements apportés en vue de porter à quatre mois le temps moyen de traitement.

4. La dotation en personnel

À la fin de la période visée par le présent rapport, l'effectif du Tribunal comportait 75 permanents, 12 contractuels, 22 membres à plein temps et 37 membres à temps partiel nommés par décret. De plus, le Tribunal a toujours à son emploi huit médecins-conseils principaux à temps partiel.

Le Tribunal d'appel a institué un service du personnel qui voit à toutes les questions reliées à la gestion du personnel et coordonne le recrutement. Ce service se compose du directeur des finances et du personnel, d'un agent du personnel et d'un commis à la paie et aux avantages sociaux. L'effectif du Tribunal s'en remet donc maintenant à un seul groupe en matière de gestion du personnel.

Pendant l'exercice 1988, le Tribunal a dû combler 29 postes vacants dans les catégories d'emplois professionnels (avocats et gestionnaires), techniques (programmeurs et agent de formation) et de soutien (secrétaires et commis). Vingt-six des 29 concours étaient ouverts au public et ont été annoncés dans le *Topical* et d'autres journaux. Plus de 1 300 personnes ont posé leur candidature à ces postes, et 350 d'entre elles ont été reçues en entrevue.

5. Le Service du courrier et le Service des dossiers et des documents

Il est difficile de souligner l'apport de différents services sans souligner que le succès d'une organisation dépend de la participation de chacun. Il est toutefois important de mentionner le soutien administratif qu'assurent le Service du courrier et de la photocopie ainsi que le Service des dossiers et des documents. Disons, pour être plus précis, que c'est grâce à ces services que le Tribunal peut vaquer à ses affaires quotidiennes. Chaque mois, le Service du courrier et de la photocopie prépare 333 000 photocopies de documents, expédie 3 600 envois postaux et traite les 2 000 envois reçus au Tribunal. Le Service des dossiers et des documents gère 3 000 dossiers de la Commission des accidents du travail relatifs aux dossiers formant la charge de travail courante du Tribunal d'appel. Il incombe à ce service de veiller à la sûreté de ces dossiers, d'assurer qu'ils sont à la disposition du Tribunal en temps voulu et, une fois l'audience tenue et la décision rendue, de les renvoyer aux services appropriés de la Commission. Ce service a aussi la garde des documents du Tribunal.

6. Le Service de traitement de texte

Il est essentiel, pour que le processus de traitement des décisions arrive sans encombres à l'étape finale, que le Service de traitement de texte soit capable de préparer les ébauches et la version finale de chaque décision sans délai inutile. En 1988, le Service a maintenu un temps moyen de traitement de deux jours ouvrables. Pour donner un exemple du travail accompli, citons le mois de janvier 1988 au cours duquel 429 décisions ont été traitées dans un temps moyen de deux jours. Cette moyenne de deux jours a aussi été maintenue en décembre 1988 lorsqu'on a préparé 212 documents reliés aux décisions. En plus de la préparation des décisions, le Service de traitement de texte est aussi responsable de la préparation d'autres documents nécessaires au traitement des cas.

7. Le Service de réception des nouveaux dossiers

Le Service de réception des nouveaux dossiers représente un lien essentiel entre le Tribunal et les employeurs et travailleurs qui désirent en appeler d'une question tranchée par la Commission des accidents du travail. Le personnel de ce service est le premier avec lequel entrent en contact les personnes qui veulent se renseigner sur les procédures d'appel qui régissent leur cas et déterminer la compétence du Tribunal en la matière. Les questions d'intérêt et les demandes d'interjeter

(b) Le courrier électronique - Les communications instantanées de toute sorte, maintenant chose courante au Tribunal, ont grandement amélioré la circulation et la distribution de l'information et des idées. Il est difficile d'évaluer l'importance de ce système de communication instantanée en termes concrets, mais il est indéniable qu'il est devenu indispensable.

Par contre, le Tribunal a constaté que d'autres fonctions du système de bureautique ne lui étaient pas aussi utiles. Après avoir essayé les méthodes électroniques, les membres et le personnel de soutien en sont pour la plupart revenus aux calendriers de papier et aux aide-mémoire classiques. Nous avons aussi rejeté la bureautique en ce qui concerne notre système de classement. Préoccupés par la puissance de notre ordinateur, nous avons décidé de ne l'utiliser pour le classement permanent que dans le cas des modèles, des précédents et d'une série complète de décisions déjà rendues. Nous n'avons eu aucune difficulté à prendre cette décision étant donné que l'utilité de fichiers électroniques permanents pour le fonctionnement du Tribunal n'était pas évidente.

La fonction de conférence électronique a reçu un accueil partagé. Selon toute vraisemblance, le personnel et les membres du Tribunal opposent instinctivement une forte résistance à un système qui semble avoir la mission inhumaine de remplacer les réunions en bonne et due forme. Ils participent donc peu aux conférences électroniques pour le moment. Cependant, en tant que président, je trouve cette fonction très précieuse dans mes activités de consultation et je suis certain que les avantages exceptionnels que présente ce dispositif de consultation de groupe pour un organisme tel que le Tribunal sauront se faire jour avec le temps.

Quant au système de gestion de cas, il en est encore au stade de la mise au point. Les quelques paragraphes qui suivent sont consacrés à ce système.

3. Le système informatique de gestion de cas

Au cours de l'été 1987, le Tribunal d'appel s'est lancé dans un important projet visant à utiliser un logiciel de gestion de base de données pour gérer les fichiers d'information nécessaires à la préparation des cas et à la conduite des audiences. Ce logiciel perfectionné a été mis au point et resté pendant la majeure partie de 1988. Des problèmes se sont présentés, comme il arrive à chaque fois que l'on innove dans les sphères de la haute technologie, mais ils ont été surmontés. Après avoir atteint son objectif de mettre sur pied un système de gestion de cas, le Tribunal a entrepris de le mettre à l'essai afin de vérifier s'il était complet et l'a mis au point en en modifiant les programmes.

Le système informatique de gestion de cas permettra non seulement de suivre de près tout cas particulier mais fournira aussi une vue d'ensemble détaillée des activités quotidiennes, hebdomadaires et mensuelles du Tribunal. Les administrateurs pourront ainsi veiller à ce que les cas soient traités de manière expéditive et repérer les faiblesses de la procédure.

D'autres organismes du gouvernement de l'Ontario qui, dans le cadre de leurs attributions administratives, doivent gérer de nombreux fichiers et documents surveillent de près les progrès accomplis dans la mise au point et la mise en place du système informatique de gestion de cas du Tribunal d'appel. Vers la fin de 1988, le Tribunal a préparé un enregistrement expliquant le système en question à l'intention d'une agence du gouvernement de l'Ontario.

Les travaux de mise au point ont toutefois démontré que le fonctionnement du système de gestion de cas requiert un système d'une puissance supérieure à celle que nous avions estimée au début et qu'il faudra améliorer considérablement notre système informatique pour le rendre opérationnel. Il est donc maintenant nécessaire de décider s'il conviendrait d'effectuer ce nouvel investissement. À la fin de la période visée par le présent rapport, cette décision avait été laissée en suspens jusqu'à ce que l'on soit parvenu à une meilleure compréhension des besoins du Tribunal en matière de bureautique (traitement de texte, courrier et conférence électroniques) et jusqu'à ce

F LES ASPECTS ADMINISTRATIFS

1. Faits saillants

Au cours de la période visée par le présent rapport, le fonctionnement du Tribunal a été marqué par la réussite de la campagne visant à maîtriser le nombre de dossiers en souffrance au stade postérieur à l'audience et les retards au stade de la prise de décision, les efforts considérables du personnel en vue de mettre au point le système informatique de gestion de cas, la mise en place très réussie du système de bureautique, la publication des premiers numéros du WCAT Reporter, la mise en service de la base de données Infomart fournissant le texte intégral de tous les cas, au cours des derniers mois, la réorganisation visant à réduire à quatre mois le temps moyen de traitement de tous les cas.

2. Le système informatique

Pendant l'été 1987, le Tribunal d'appel a doté ses bureaux d'un système informatique numérique autonome (Digital, All-In-1) afin d'offrir un environnement de bureautique comportant les fonctions de traitement de texte, de courrier électronique, de documentation/analyse de la gestion des cas et de conférence électronique.

Le personnel, les vice-présidents et les membres ont reçu une formation sur l'utilisation du système au fur et à mesure de son installation. Tout le monde a réservé un bon accueil à ce système et a démontré un enthousiasme remarquable à l'égard de sa contribution au travail du Tribunal. En fait, la demande de la part des vice-présidents, des membres et de l'effectif a presque tout de suite dépassé la puissance de prise en charge de terminaux fonctionnant sur l'unité centrale.

En réponse à cette pressante demande, le Tribunal a choisi de surcharger le système de terminaux à titre expérimental, en supposant que la charge imposée au système était fonction non seulement du nombre de terminaux mais aussi de la nature et de la portée de leur utilisation. Puisque la planification de la capacité de tout nouveau système repose toujours quelque peu sur des spéculations au sujet de la nature et de l'importance de son utilisation, il a semblé raisonnable de mettre la capacité de notre système à l'épreuve plutôt que de frustrer dès le début l'enthousiasme dont il faisait spontanément l'objet partout au Tribunal.

Le système devait prendre en charge 54 terminaux, mais nous avons laissé ce nombre augmenter très rapidement, jusqu'à concurrence de 91.

L'expérience a, jusqu'à présent, été couronnée de succès. L'ajout de terminaux supplémentaires a réduit le temps de réponse mais pas suffisamment pour décourager les utilisateurs.

La charge imposée au système le pousse jusqu'aux limites de sa puissance maximale, ce qui pourrait produire quelques mauvaises surprises. Cela a tout de même l'avantage de forcer le Tribunal à user de créativité et de conservatisme à d'autres égards dans la gestion de son utilisation. Dans l'interval, mettre des terminaux à la disposition de la plupart de ceux, vice-présidents, membres et personnel, qui pouvaient démontrer un besoin et de l'intérêt a permis au système informatique de jouer un rôle de plus en plus important, ce qui a eu le grand avantage d'améliorer la productivité et l'efficacité au Tribunal. L'expérience nous a amenés à un certain nombre de conclusions au sujet de l'utilisation de notre système informatique.

Voici les fonctions du système informatique qui se sont avérées les plus importantes au Tribunal:

- (a) Le traitement de texte et, surtout, la capacité de l'ordinateur de permettre à ceux qui rédigent les décisions et d'autres documents – les vice-présidents par exemple – de participer directement au processus de création de documents.

Dans le cadre des enquêtes menées pour vérifier le bien-fondé des décisions rendues par le Tribunal, les relations entre le Tribunal et l'ombudsman ont évidemment été assez simples, tant que les plaintes ont été jugées sans fondement. Dans de tels cas, le Tribunal a collaboré en fournissant des copies de ses dossiers. Par principe toutefois, lorsque l'ombudsman lui demandait de fournir une première réponse à l'égard d'une plainte portant sur le bien-fondé d'une décision, le Tribunal a invariablement répondu aux requêtes de routine de ce dernier en le renvoyant aux justifications écrites du jury d'audience contenues dans la décision rendue.

Evidemment, les relations ont pris une tournure plus complexe dans le cas de la plainte que l'ombudsman a jugé bon d'appuyer à la suite de son enquête.

Quel que soit le cas, dès que le bien-fondé d'une plainte a été établi lors d'une enquête initiale, la première démarche que fait l'ombudsman est d'écrire à l'organisme contre lequel la plainte a été portée. Dans sa lettre, il informe l'organisme en question qu'il considère provisoirement la plainte comme étant fondée, lui explique comment le cas du demandeur sera défendu et l'invite à présenter ses observations au sujet des mesures correctives envisagées. En réponse à cette invitation, le président du Tribunal a indiqué à l'ombudsman que le Tribunal ne jugait pas approprié d'envisager de telles mesures au sujet d'une plainte portant sur le bien-fondé d'une de ses décisions. Des observations du genre constitueraient une défense supplémentaire de la décision contestée -- ce qui reviendrait à ajouter aux motifs donnés par le jury d'audience ou à les changer sans autorisation -- ou des concessions que le Tribunal n'est autorisé à faire qu'en exerçant sa compétence légale de réexamen.

Cette occasion d'émettre des observations est manifestement offerte à l'organisme afin de lui permettre de persuader l'ombudsman qu'il se trompe sur les faits ou qu'il les a mal analysés, ou de rectifier une mauvaise décision avant que l'ombudsman ne porte à la connaissance du public qu'il la considère comme étant mauvaise. La lettre dans laquelle cette invitation est lancée précise que, sauf s'il reçoit des observations convaincantes ou si des mesures acceptables sont prises, l'ombudsman rendra sa décision définitive, pour ensuite soumettre son rapport à la législature et en envoyer copie au bureau du premier ministre.

Même si les membres du Tribunal sont à titre officiel indépendants, le renouvellement de leur mandat dépend du bureau du premier ministre. Le Tribunal se trouverait donc dans une position que l'on pourrait qualifier de délicate s'il décidait de se prévaloir des possibilités de rectification offertes à ce stade.

Dans le cas qui nous intéresse, j'ai informé l'ombudsman que j'estimais que le Tribunal ne pouvait rien faire pour l'empêcher d'émettre un rapport et une recommandation défavorables si ce n'était qu'attendre qu'il parvienne à une décision définitive fondée uniquement, du point de vue du Tribunal, sur les motifs exposés initialement par le jury d'audience. Le Tribunal déterminerait alors si l'ombudsman avait identifié d'autres motifs pouvant justifier qu'il exerce son pouvoir de réexamen, en tenant compte de ses critères habituels à cet égard. Le Tribunal ne pouvait se permettre de recourir à son pouvoir de réexamen en réaction à la décision provisoire de l'ombudsman et de donner l'impression d'utiliser le processus de réexamen afin d'éviter que l'ombudsman ne le critique publiquement.

Le Tribunal a reçu le rapport final de l'ombudsman au sujet de la plainte en question vers la fin de la période visée par le présent rapport. L'ombudsman y recommande un réexamen de la décision en question à la lumière de son rapport. À la fin de la période couverte par ce rapport, la réponse du Tribunal à cette recommandation était en cours de formulation.

J'ai donc écrit au président de la Commission et fait parvenir copie de la lettre à toutes les parties et à tous les membres du conseil d'administration qui avaient participé à l'examen de la *Décision n° 72* en vertu du paragraphe 86n. Dans cette lettre, j'ai indiqué les questions que je considérais comme étant encore en suspens et j'ai invité les destinataires à me faire parvenir leurs observations écrites, en précisant que toute observation reçue serait transmise aux jurys saisis de cas dans lesquels ces questions se poseraient.

Voici comment j'ai exposé les questions en suspens dans cette lettre:

1. La décision qu'a rendue le conseil d'administration de la Commission à la suite de l'examen de la signification de l'expression "lésion corporelle par accident" donnée dans la *Décision n° 72*, qu'il a effectuée en vertu du paragraphe 86n, diffère de celle du Tribunal à cet égard. Par conséquent, la décision de la Commission aurait-elle automatiquement eu force exécutoire sur le Tribunal dans le cas de la *Décision n° 72* si la Commission lui avait, comme le prévoit l'alinéa 86n(1), ordonné de réexaminer ladite décision?

2. Si la décision de la Commission avait eu force exécutoire sur le Tribunal dans le cas de la *Décision n° 72*, en aurait-il été de même pour les cas ultérieurs de même nature?

3. La réponse à la question n° 2 aurait-elle été différente si le conseil d'administration avait ordonné au Tribunal de réexaminer la *Décision n° 72*?

4. Si la réponse aux questions n°s 1 et 2 est négative, quelle est l'obligation du Tribunal à l'égard des décisions que rend le conseil d'administration au sujet de questions de droit général ou de principes directeurs à la suite d'examen en vertu du paragraphe 86n: dans le cas faisant l'objet de l'examen? dans les cas ultérieurs de même nature?

À la fin de la période visée par le présent rapport, le Tribunal n'avait pas encore eu à examiner de cas nécessitant la résolution des questions qui précèdent. Il avait toutefois reçu de nombreuses observations écrites en réponse à la lettre du président susmentionnée. La plupart des auteurs de ces observations refusaient pour le moment de se prononcer et demandaient qu'on leur donne à nouveau l'occasion de le faire lorsqu'un cas approprié se présenterait.

Tout ceci pour conclure que nous sommes donc parvenus à la fin de la période visée par le Troisième rapport, à l'aube de notre quatrième année d'existence, sans que cette question-clé soulevée par le paragraphe 86n n'ait été résolue.

E LES RELATIONS ENTRE LE TRIBUNAL ET L'OMBUDSMAN

Pendant la période visée par ce rapport, l'Ombudsman nous a fait part de 113 plaintes dont il avait été saisi au sujet de décisions du Tribunal. Ces plaintes portaient, presque sans exception, sur le bien-fondé des décisions rendues. À la fin de la même période, l'Ombudsman avait terminé son enquête pour 37 de ces plaintes et, sauf dans un cas, avait conclu que les décisions du Tribunal ne pouvaient être qualifiées de déraisonnables. On trouvera ci-après un compte rendu de la situation dans le cas du rapport défavorable.

Comme je l'avais indiqué dans le Deuxième rapport, j'ai, en tant que président du Tribunal, de la difficulté à accepter les implications que peut avoir sur un tribunal judiciaire l'examen du *bien-fondé* de ses décisions par l'Ombudsman. C'est une difficulté, je dois le préciser, qui n'est pas ressentie par la totalité des membres du Tribunal bien qu'elle semble parfois en préoccuper la majorité. Ces problèmes de concept ont incité le Tribunal à peser avec soin ses réponses lors de communications avec l'Ombudsman lorsque celles-ci concernaient des plaintes sur le bien-fondé de ses décisions.

élargi la définition pour qu'il soit clair que les lésions survenant du fait et au cours de l'emploi sont indemnisables, qu'un accident a caractère fortuit soit ou non survenu.

De prime abord, il importerait donc peu qu'une lésion soit causée par un accident a caractère fortuit ou par un accident du type "incapacité". Les deux feraient partie des "lésions par accident" aux termes du paragraphe 3(1). Dans la pratique, il est toutefois important de déterminer si les lésions soudaines et inattendues non attribuables à des événements fortuits externes sont reliées à un événement fortuit ou à une incapacité selon la définition du terme "accident". Il est en effet important de le déterminer parce que le travailleur peut se prévaloir de la présomption législative en vertu de laquelle une lésion reliée à une incapacité est réputée, sauf preuve du contraire, être survenue du fait de l'emploi si elle survient au cours de l'emploi. Cette clause de présomption (paragraphe 3(3)) ne s'applique pas aux cas de lésions reliées à l'élément "incapacité" de la définition. Dans la *Décision n° 72*, le jury d'audience avait conclu que la lésion de la travailleuse était survenue du fait de son emploi en se fondant sur la clause de présomption.

Il est important de connaître tous les détails relatifs à la *Décision n° 72* afin de comprendre les événements qui ont suivi la décision qu'a rendue le conseil d'administration après l'avoir examinée en vertu du paragraphe 86n.

Un aspect particulier de la décision en question était pour le moins surprenant. Après avoir conclu que le Tribunal avait mal interprété la définition du terme "accident" relativement à son application dans les cas de lésions soudaines non associées à des événements fortuits externes, le conseil d'administration n'a pas ordonné au Tribunal de réexaminer le cas en question, comme le prévoit le paragraphe 86n.

Le conseil d'administration a expliqué qu'il n'ordonnait pas de réexamen dans les circonstances parce que la travailleuse concernée avait été victime d'une procédure longue et complexe ayant principalement pour but d'établir un principe fondamental pour le système d'indemnisation en général et non ses droits personnels. Le conseil d'administration a estimé qu'il aurait été mal à propos de prolonger la période d'anxiété à laquelle la travailleuse avait déjà été soumise en ordonnant au Tribunal de réexaminer sa décision. Le conseil a donc ordonné que les indemnités soient imputées au Fonds de garantie pour travailleurs réintégrés, au lieu d'être imputées au compte de l'employeur.

Malgré que le conseil d'administration a décidé de ne pas ordonner au Tribunal de réexaminer la *Décision n° 72*, le personnel de la Commission a estimé que la décision prise par la majorité du conseil à l'égard de l'interprétation sur laquelle était fondée ladite décision devrait des lors dicter les décisions de la Commission dans les cas semblables à venir et qu'il devrait en être ainsi des décisions du Tribunal. Le conseil d'administration n'avait toutefois pas précisé quel effet aurait sa décision sur les cas à venir.

En décidant de ne pas lui ordonner de réexaminer la *Décision n° 72*, la Commission a privé le Tribunal d'une occasion de déterminer, dans ce cas, à qui l'alinéa 86n(1) donne le dernier mot dans les débats portant sur des questions de droit général et de principes directeurs. Par contre, le personnel de la Commission avait mis simultanément en branle le processus de décision de la Commission en prenant pour acquis que le dernier mot revenait à son conseil d'administration aux termes dudit alinéa.

Compte tenu des circonstances, j'étais, en ma qualité de président du Tribunal, préoccupé par le fait que le public devait être informé des questions que soulevait la décision de la Commission et qui, aux yeux du Tribunal, étaient encore en suspens, en prévision des cas à venir portant sur des lésions soudaines et inattendues non attribuables à des événements fortuits externes pour lesquels la mise en application de la clause de présomption pourrait jouer un rôle déterminant. Je voulais aussi que les travailleurs et le patronat aient l'occasion de faire connaître leur position à l'égard de ces questions aux jurys qui seraient appelés à examiner de tels cas.

Au cours de cette période, la liste des nominations à temps partiel a subi quelques modifications. Marsha Faubert, Karl Friedmann et Joy McGrath ont été nommés vice-présidents à temps partiel. Mark Gabinet, Sara Sutherland, Gerry Nipshagen et Allen Merritt ont été nommés membres à temps partiel représentant les employeurs. Comme on l'a indiqué plus haut, Frances Lankin a été nommée membre à temps partiel représentant les travailleurs.

Une liste de tous les vice-présidents et membres actifs du Tribunal accompagnée d'une courte description de l'expérience de chacun se trouve à l'*Annexe B* de ce rapport.

C LES RELATIONS ENTRE LE TRIBUNAL ET LA COMMISSION

Les relations entre la CAT et le Tribunal ont continué à évoluer pendant la période visée par le présent rapport. Les deux organismes continuent à entretenir des rapports de collaboration harmonieux, en dépit des défis posés par un certain nombre de questions de fond concernant l'indemnisation qui les ont de temps en temps mis à l'épreuve. Il est important de relier ces interactions afin de mettre en lumière l'orientation des relations entre les deux organismes. De plus, étant donné qu'elles sont d'une importance extrême pour le système d'appel, j'ai cru qu'il serait bon d'en faire un compte rendu complet, compte rendu que j'ai placé en annexe (*Annexe C*) en raison de sa longueur. Les lecteurs qui s'intéressent à la question pourront se reporter à cette annexe et les autres pourront en oublier jusqu'à l'existence.

D QUI A LE DERNIER MOT -- UNE QUESTION ENCORE EN SUSPENS

À la fin de la période visée par le Deuxième rapport, on ne savait toujours pas qui, du conseil d'administration de la CAT ou du Tribunal, a le dernier mot dans les débats portant sur des questions de droit général ou de principes directeurs, en vertu du paragraphe 86n de la Loi. Comme le Tribunal n'avait pas eu l'occasion d'interpréter le libellé de ce paragraphe, cet aspect critique de la législation n'avait pas encore été résolu.

Il semblait toutefois qu'une telle occasion se présenterait bientôt grâce à l'examen de la *Décision n° 72* (21 juillet 1986) du Tribunal, auquel procédait le conseil d'administration de la Commission.

Dans la *Décision n° 72*, le Tribunal a jugé qu'une lésion soudaine et inattendue – comme une protrusion discale – survenant pendant le cours normal des tâches coutumières d'un travailleur constitue une lésion corporelle causée par un événement fortuit aux termes de la *Loi sur les accidents du travail*. Ladite décision est conforme à la jurisprudence anglaise et canadienne selon laquelle le terme "événement fortuit" peut référer à une cause ou à un résultat inattendu. La *Décision n° 72* a soulevé de vives controverses chez le patronat en Ontario, et il s'agissait du premier cas que le conseil d'administration de la CAT décidait d'examiner en vertu des dispositions du paragraphe 86n.

Dans la décision résultant de l'examen, qui a paru le 28 septembre 1988, la majorité des membres du conseil d'administration a conclu que le Tribunal avait mal interprété la jurisprudence. Relevant certaines différences entre le libellé de la Loi sur les accidents du travail de l'Ontario et la législation examinée par la Cour suprême du Canada, la Cour d'appel et la Chambre des Lords pour rendre certaines des décisions sur lesquelles le Tribunal s'appuyait dans ses conclusions, la Commission a conclu que lesdites décisions étaient vraiment distinctes et qu'elles ne s'appliquaient pas à la loi de l'Ontario.

Une des différences auxquelles la décision du conseil d'administration faisait référence porte sur l'élément "incapacité" ajouté en 1965 à la définition du terme "accident" dans la loi de l'Ontario. Ladite définition ne comportait auparavant que les éléments "événement fortuit" et "inconduite volontaire" (de quelqu'un d'autre que le travailleur). La modification apportée à la Loi en 1965 a

LE RAPPORT DÉTAILLÉ

A LA PÉRIODE VISÉE PAR LE RAPPORT

Le présent rapport vise la période de quinze mois allant du 1^{er} octobre 1987 au 31 décembre 1988. Les motifs de la prolongation de la période visée sont expliqués dans l'Introduction.

B CHANGEMENTS APPORTÉS À LA LISTE DES VICE-PRÉSIDENTS ET DES MEMBRES

Au cours de cette période, divers changements ont été apportés à la liste des vice-présidents et des membres représentant les travailleurs et les employeurs. En plus des changements mentionnés à l'*Annexe B*, il faut signaler une certain nombre d'autres changements.

Quatre nouveaux vice-présidents à plein temps ont été nommés au cours de la période en question. Pour l'un d'entre eux, il s'agissait de combler un nouveau poste; les trois autres ont été nommés pour combler les postes que la démission de leurs titulaires avait laissés vacants.

Le nouveau poste de vice-président avait été prévu dans le Deuxième rapport. Dans ce rapport, je disais que le budget du Tribunal pour 1986-1987 prévoyait la création possible de deux postes supplémentaires de vice-président à plein temps et que l'un d'entre eux avait été comblé en août 1987. Vers la fin de l'année 1987, la nécessité de combler le second poste ne faisait plus aucun doute.

Les trois vacances ont été créées par la nomination de Kathleen O'Neil à la Commission des relations du travail de l'Ontario, la démission de Jim Thomas, qui a accepté un poste de cadre supérieur au sein du gouvernement de l'Ontario, et la démission d'Elaine Newman, qui a accepté la nomination d'avocat-conseil du Tribunal lorsque David Starkman a quitté ce poste.

Jean Guy Bigras, qui avait d'abord été nommé vice-président à temps partiel le 14 mai 1986, a accepté, le 17 décembre 1987, le second poste de vice-président à plein temps, nouvellement créé. John Moore, qui avait d'abord été nommé vice-président à temps partiel le 16 juillet 1986, a accepté une nomination à plein temps le 1^{er} mai 1988; David Starkman, qui était l'avocat-conseil du Tribunal, a été nommé vice-président, le 1^{er} août 1988, pour remplacer Laura Bradbury qui est devenue présidente suppléante après le départ de Jim Thomas; Zeynep Onen, anciennement avocate principale au Bureau des conseillers juridiques du Tribunal, a été nommée au poste de vice-présidente laissé vacant par Elaine Newman, le 1^{er} octobre 1988.

Avec la nomination d'un deuxième nouveau vice-président, le nombre total des vice-présidents à plein temps du Tribunal est passé à dix (ce nombre inclut la présidente suppléante qui est aussi vice-présidente).

Parmi les postes de membres à plein temps représentant les employeurs et les travailleurs, on a assisté à quatre changements. Frances Lankin, qui était membre à plein temps représentant les travailleurs, a accepté un poste à plein temps avec le S.E.F.P.O. et a été nommée membre à plein temps représentant les travailleurs le 25 février 1988. La vacance au poste de membre à plein temps représentant les travailleurs créée par ce changement nous a conduits à la nomination, le 11 juin 1988, de Ray Lebert qui, avant cette nomination, était le secrétaire-trésorier de l'Association des travailleurs canadiens de l'automobile, section locale 444, poste qui lui a permis d'affirmer son expérience dans le domaine des accidents du travail. David Mason, qui a pris sa retraite le 30 septembre 1988, a laissé vacant un poste de membre à plein temps représentant les employeurs, poste comblé par Martin Meslin qui est devenu membre à plein temps représentant les employeurs le 1^{er} août 1988.

ÉNONCÉ DU MANDAT, DES OBJECTIFS ET DE LA PRISE D'ENGAGEMENTS

L'étude spéciale du budget que le Tribunal a entreprise lors de la préparation du budget de l'année civile 1989 lui a permis de passer en revue son mandat, ses objectifs et sa prise d'engagements. Cet exercice a donné lieu à la formulation d'un énoncé de mandat, d'objectifs et de prise d'engagements en bonne et due forme, que le Tribunal a adopté le 1^{er} octobre 1988, lors de son troisième anniversaire. Cet énoncé, dont le libellé a été établi avec grand soin, explique le mandat fondamental du Tribunal, tel qu'il le perçoit en s'appuyant sur ses trois ans d'expérience pratique. Il s'agit, si vous voulez, de la charte des obligations et des objectifs du Tribunal d'appel.

L'énoncé approuvé se trouve à l'*Annexe A*.

Vers le mois d'octobre 1986, le Tribunal a amorcé une période qu'on pourrait appeler *stade de mise à l'essai*. Nous avons finalement établi les bases judiciaires et administratives du Tribunal et nous pouvions commencer à en mettre les fondements à l'essai.

Cette phase d'essai nous a permis de repérer des lacunes dans les ressources affectées à certains secteurs du Tribunal et d'en combler une partie; nombres des mesures correctives prises à ce moment-là ont été traitées dans le budget de l'exercice 1988-1989, déposé en décembre 1987. Permettez-moi de répéter que nous croyons juste de reconnaître que, vers le mois d'avril 1988, soit environ deux ans et demi après sa création, le Tribunal a émergé de son stade de mise à l'essai et a trouvé son rythme opérationnel.

Ma seule réserve à cet égard concerne les systèmes informatiques du Tribunal. Notre système informatique, et surtout notre système de gestion de cas, en sont encore au stade expérimental. Nous serons bientôt en mesure de prendre une décision au sujet des améliorations à apporter à ces systèmes ainsi que de l'utilisation future des ordinateurs au Tribunal. Cette décision, qui aura des répercussions considérables sur les coûts d'immobilisation, doit être prise avant que le Tribunal ne puisse mener à bonne fin le développement de ses structures et de son système informatique. Comme le savent maintenant la plupart des gens, le Tribunal est financé à même la caisse des accidents de la CAT. Cependant, afin que le Tribunal demeure parfaitement indépendant de la CAT, celle-ci n'a aucune responsabilité dans l'approbation des budgets du Tribunal. Dans le protocole d'entente passé avec le ministre du Travail, le président du Tribunal s'est engagé à soumettre les budgets du Tribunal à l'approbation du ministre.

Le premier budget du Tribunal portait sur la période de six mois allant du 1^{er} octobre 1985 au 30 mars 1986 - fin de l'exercice du gouvernement. Les coûts de fonctionnement budgétés (je ne ferai mention que des coûts de fonctionnement, pour ensuite présenter les coûts d'immobilisation) pour cette première période de six mois qui, compte tenu des circonstances, ne reposaient que sur une série de conjectures, étaient de 3,68 millions de dollars, et les dépenses réelles de fonctionnement se sont élevées à 1,24 millions de dollars.

Le deuxième budget, soit celui de la période allant du 1^{er} avril 1986 au 30 mars 1987, que nous avons soumis en janvier 1986, alors que nous avions une expérience pratique encore rudimentaire du fonctionnement du Tribunal, s'élevait à 7,69 millions de dollars. Les dépenses réelles de fonctionnement se sont élevées à 5,71 millions de dollars pendant ladite période.

Le troisième budget, que nous avons préparé au mois de novembre 1986 - seulement quatre mois après le début du stade de mise à l'essai - visait l'exercice allant du 1^{er} avril 1987 au 31 mars 1988. Il prévoyait des dépenses de fonctionnement de 8,23 millions de dollars, et les dépenses réelles se sont élevées à 7,38 millions de dollars.

C'est donc dire qu'il a fallu attendre jusqu'à la préparation du budget de l'exercice 1988-1989, en décembre 1987, pour se prévaloir d'une expérience pratique réelle du fonctionnement du Tribunal. Ce budget, qui visait la période du 1^{er} avril 1988 au 31 mars 1989, prévoyait des dépenses de fonctionnement de 8,38 millions de dollars. Comme l'indiquent les rapports financiers présentés plus loin, ce n'est qu'une fois la moitié de l'exercice 1988-1989 écoulée que nous avons décidé de faire coïncider l'exercice du Tribunal avec l'année civile. Le budget de l'exercice 1988-1989 a donc été modifié afin de ne porter que sur la période de neuf mois allant du 1^{er} avril 1988 au 31 décembre 1988. Distribuées au prorata les dépenses de fonctionnement budgétées pour cette période étaient de 6,28 millions de dollars, et les dépenses réelles se sont élevées à 5,98 millions de dollars.

Les dépenses d'immobilisation se sont chiffrées à 2,42 millions de dollars du 1^{er} octobre 1985 à la fin de la période visée par le présent rapport.

financier adéquat. Il était difficile de répondre à ces préoccupations pendant les premières années d'existence du Tribunal et, jusqu'à présent, nous n'avons pu le faire que par l'entremise de nos états financiers et de nos budgets.

Toutefois, le Tribunal croit être parvenu au terme de sa période de développement au cours de la période visée par ce rapport. Il a atteint un stade de maturité et il est juste de reconnaître qu'il a trouvé son rythme opérationnel quant à l'élaboration de ses budgets et au contrôle de ses dépenses. Le budget de fonctionnement de l'exercice 1988-1989 (soumis au ministre du Travail en décembre 1987) constitue un budget de base qui devrait, dans l'ensemble, être considéré comme suffisant pour remplir les attributions légales qui incombent actuellement au Tribunal.

Voici comment j'exposais la situation aux présidents des comités permanents et aux chefs de services du Tribunal dans un mémoire daté d'avril 1988:

Alors que nous nous préparons à dresser le budget de l'année civile 1989, nous sommes parvenus à un stade auquel il semble pour le moins judicieux, sur le plan financier, de supposer que le Tribunal a atteint son rythme opérationnel et que le budget de l'exercice 1988-1989 constitue un budget de base qui devrait, dans l'ensemble, lui suffire pour remplir ses attributions.

Une telle supposition se révélera peut-être prématurée. Toutefois, je crois, tout comme le Comité des finances et de l'administration et le Comité de direction, que nous sommes parvenus au stade où nous devons fixer des limites et commencer à gérer la croissance de nos besoins financiers à l'instar d'un organisme opérationnel plutôt qu'à celui d'un organisme expérimental, sans quoi nous risquons de prendre nos désirs pour des besoins.

Le Tribunal a aussi profité de l'occasion que lui offrait l'élaboration du budget de 1989 pour procéder à un examen minutieux de ses besoins financiers. Il semble que le moment soit venu de fournir un compte rendu de la gestion financière du Tribunal pendant sa période de développement qui serait plus à la mesure du grand public.

Pendant sa période de développement, le Tribunal a traversé trois étapes majeures. La première, qui remonte à l'été 1985, lorsque j'étais président temporaire, a donné lieu à la *formulation théorique* de la raison d'être du Tribunal. Cette formulation ne reposait que sur des suppositions au sujet de toutes les variables de fonctionnement - charge de travail, temps de préparation, durée des audiences, période nécessaire à la rédaction des décisions, etc. Il n'existait aucune données concrètes sur ces facteurs déterminants les coûts, et aucune ne seraient disponibles tant que le Tribunal ne serait pas entré en fonction. Les problèmes étaient d'autant plus nombreux qu'il s'agissait d'établir un modèle judiciaire tout nouveau, jamais mis à l'essai. (Il en était ainsi en raison du caractère sans précédent des attributions judiciaires du Tribunal telles que prescrites par la Loi et dictées par le système d'indemnisation des travailleurs en Ontario, en 1985.)

Le *stade expérimental* du développement du Tribunal a débuté en octobre 1985, lorsqu'il a fait ses débuts. Le président et le président suppléant sont entrés en fonction à plein temps le 1^{er} octobre 1985, et la nomination par décret des premiers vice-présidents et des membres des jurys a suivi peu après. L'embauche et la formation du personnel ainsi que la commande des fournitures et du matériel ont débuté, à toutes fins pratiques, le 1^{er} octobre. Le Tribunal a tenu sa première audience en novembre 1985 et a rendu sa première décision le 9 décembre 1985. Quelques audiences ont suivi en décembre de la même année, et leur nombre a augmenté au fil des mois. En septembre 1986, au moment de la deuxième série de nominations par décret, le Tribunal est parvenu au terme de son stade expérimental et est vraiment entré dans le vif des opérations.

Au stade expérimental, il a constamment fallu rectifier le processus de décision et l'organisation des services de soutien en fonction de l'expérience acquise.

On se demande bien sûr continuellement, surtout du côté du patronat, à combien se chiffrent les coûts de fonctionnement du Tribunal et si la direction de cet organisme exerce un contrôle

LES DÉPENSES DU TRIBUNAL

Il est trop tôt pour affirmer avec certitude qu'il sera possible de réduire à quatre mois le temps moyen de traitement complet de tous les cas entendus à Toronto, mais le progrès accompli en ce sens est indéniable.

Ces prévisions s'appliquent seulement aux audiences tenues à Toronto. Le calendrier des audiences tenues à l'extérieur de Toronto prévoit habituellement des dates d'audience plus espacées étant donné qu'il est impossible de tenir des audiences quotidiennes à l'extérieur.

À la fin de la période visée par ce rapport, les personnes qui en appellent de décisions rendues pour des cas relatifs à l'admissibilité à des indemnités et à leur montant, ne nécessitant pas le règlement de questions complexes ou nouvelles et n'exigeant pas d'enquêtes supplémentaires, médicales ou autres, peuvent s'attendre à obtenir une audience à Toronto dans les deux mois et demi qui suivent la réception du formulaire de demande et à recevoir une décision en dedans d'un mois à un mois et demi après audition de leur appel, à condition qu'elles soient elles-mêmes prêtes à participer au processus sans délai. D'une manière générale, les appels relevant de l'article 77 et de l'article 21 peuvent désormais être entendus et réglés en dedans de trois à quatre semaines.

5. On prévoit être en mesure d'émettre les décisions dans les six semaines qui suivent la date de l'audience ou les six semaines suivant la réception des preuves et observations après audience. Ces prévisions ne seront pas toujours réalistes, mais il faudra fournir des explications valables pour dépasser de trop loin la date limite fixée.

4. Les audiences qui se tiennent à Toronto sont planifiées en dedans de six semaines après réception de la description de cas par les parties. Si les parties ne peuvent pas se mettre d'accord sur une date d'audience, c'est notre service d'inscription des audiences qui est chargé d'en fixer une.

3. On inscrit la date de l'audience au calendrier des audiences dès l'émission de la description de cas. S'il s'avère nécessaire d'effectuer d'autres préparatifs ou remaniements, ils doivent être faits avant la date fixée pour l'audience.

2. Les descriptions de cas sont préparées par le Bureau des conseillers juridiques du Tribunal (BCJT), à partir d'un modèle simplifié, dès le début du traitement. Lorsqu'il est nécessaire que le BCJT fasse des préparatifs ou des remaniements additionnels, ceux-ci sont effectués après avoir complété la description de cas. Si c'est le cas, la description de cas est accompagnée des addenda appropriés.

1. Les appels ne sont traités que lorsque les représentants ont confirmé qu'ils sont prêts à commencer la procédure de traitement et que tous les aspects administratifs ont été couverts dans les formulaires de demande d'appel.

La restructuration des procédures du Tribunal, en vue de parvenir à un temps moyen de traitement de quatre mois, a été quelque peu retardée par les changements survenus dans les rangs des cadres supérieurs du Tribunal, mais elle est maintenant en cours d'exécution. Voici un résumé de la restructuration qui a été mise en oeuvre ou, du moins, approuvée à la fin de la période visée par ce rapport:

stade préalable à l'audience de manière à réduire à quatre mois son temps moyen de traitement complet, sans nuire à l'efficacité du processus judiciaire ou à la qualité de ses décisions.

La proportion des décisions du Tribunal relevant de divergences portant sur des questions de droit ou de principes directeurs continuera à diminuer au fur et à mesure que le Tribunal et la Commission en viendront de plus en plus à percevoir les questions de droit sous un même angle - grâce à l'examen public, rationnel et continu auquel le système encourage maintenant le Tribunal et la Commission à procéder, et non en raison d'une influence quelconque exercée sur le Tribunal par la Commission (ou vice-versa). De plus en plus, la proportion d'appels accueillis dans les cas litigieux ne reflètera que la tendance fondamentale des commissaires d'audience uniques et des jurys d'audience tripartites du Tribunal (qui disposent souvent de preuves plus élaborées) à interpréter différemment les faits d'ordre médical ou autre.

Les tendances qui ressortent des données de la Commission me portent à croire que la proportion d'appels accueillis relatifs à l'admissibilité à des indemnités et à leur montant finira par se stabiliser aux alentours de 30 à 35 pour cent.

LES RETARDS AU STADE DE LA RÉDACTION DES DÉCISIONS

Il me fait plaisir d'annoncer que les retards au stade postérieur à l'audience - conséquence tenace de la période de rodage du Tribunal sur laquelle je me suis longuement attardé dans le Deuxième rapport - ne posent plus de problèmes.

À la fin de l'année 1988, le Tribunal avait rendu 781 décisions. Le temps moyen de traitement de ces décisions, à partir du moment où la décision était prête pour la rédaction jusqu'à la date de son émission, était de 69 jours (2,3 mois). Cette période comprend les cas dont les jurys étaient présidés soit par des vice-présidents à plein temps, soit par des vice-présidents à temps partiel. Si l'on ne tient compte que des décisions de jurys présidés par des vice-présidents à plein temps, le temps moyen écoulé avant l'émission de la décision tombe à 50 jours (1,7 mois). Pour des raisons administratives, la rédaction de décisions par les vice-présidents à temps partiel prend toujours un peu plus de temps.

Dans mes remarques préliminaires lors de la troisième présentation annuelle du Tribunal au Comité permanent du développement des ressources de l'Assemblée législative (le 26 mai 1988, compte rendu dans Hansard, vol. R-8, p. R-183), j'ai parlé longuement du problème des retards dans l'émission des décisions après l'audience. Je faisais surtout référence alors à un certain nombre d'anciens cas en souffrance pour lesquels le Tribunal avait de la difficulté à terminer la rédaction des décisions. À ce moment-là, il y avait environ 100 cas dans cette catégorie. À la fin de la période visée par le présent rapport, seulement huit décisions n'avaient pas encore été rendues.

Le fait que le nombre de cas actuellement au stade de la rédaction des décisions soit passé de 525 (en octobre 1987) à 270 (en décembre 1988) constitue un indice important de la diminution considérable du temps de prise de décision partout au Tribunal depuis la publication du Deuxième rapport.

TEMPS MOYEN DE TRAITEMENT COMPLET

Le patronat et les travailleurs continuent à se préoccuper du temps que prennent généralement les cas pour traverser toutes les étapes du processus de décision du Tribunal - du dépôt de l'appel à l'émission de la décision après l'audience. Le ministre du Travail tient particulièrement à ce que toutes les mesures possibles soient prises pour diminuer le temps moyen de traitement.

Le Tribunal a naturellement surveillé de près la question du temps de traitement, et, en juin 1988, j'ai été en mesure de rassurer le ministre en lui indiquant que je croyais qu'il était désormais possible pour le Tribunal de réorganiser ses procédures et, en particulier, celles du

RÉSUMÉ DU PRÉSIDENT

LE RENDEMENT DU TRIBUNAL

Je continue à souscrire à l'opinion que j'exprimais dans le Deuxième rapport au sujet de l'impartialité, de l'efficacité et de la pertinence du processus de décision du Tribunal de même que de la qualité et de l'utilité des décisions qu'il rend. La structure tripartite du Tribunal, qui est toujours en force, continue à exercer une grande influence sur son fonctionnement.

Dans le milieu patronal, cependant, on semble sans cesse se demander comment le Tribunal perçoit son mandat et ses rapports avec la CAT et si un tribunal d'appel externe constitue une entité vraiment viable dans le domaine de l'indemnisation des travailleurs accidentés. En ce qui concerne la viabilité d'un tribunal d'appel externe, il semble possible, avec tout le respect qui se doit, de résumer la préoccupation du patronat en disant qu'il se demande si le système peut se permettre financièrement de légiférer l'indemnisation compte tenu du fait qu'elle doit relever au départ d'une application vraiment objective de la Loi.

Par ailleurs, à mesure que la proportion d'appels accueillis diminue – selon les rapports de la Commission –, on sent que les travailleurs commencent à se demander si le Tribunal d'appel ne penche pas – peut-être à son insu – du côté de la Commission et du système d'indemnisation. Il n'y a rien d'étonnant au fait que l'expérience m'a jusqu'à maintenant confirmé que tout système d'indemnisation des travailleurs accidentés doit, dans notre société, être guidé par la primauté du droit pour être approprié en principe et être, à long terme, acceptable en pratique. Je crois que l'expérience du Tribunal d'appel a démontré qu'un tribunal d'appel externe représente une condition préalable essentielle à cet effet.

Je demeure confiant que le Tribunal d'appel et la CAT continueront à entretenir des rapports de plus en plus constructifs, qui aboutiront, au terme de la présente phase de développement, à une relation pondérée et durable.

Quant à la possibilité d'une tendance au rapprochement, chacun sait qu'elle représente en soi un risque pour tout organisme de supervision. Dans le système d'indemnisation des travailleurs accidentés, le Tribunal court aussi le risque de se laisser influencer par les travailleurs employeurs. Pour se prémunir contre toute tendance en ce sens, le Tribunal ne peut donc que rappeler constamment à ses membres les dangers auxquels ils sont exposés en raison de la place qu'ils occupent dans le système.

La diminution de la proportion d'appels accueillis constitue, à mon avis, le résultat prévisible de l'influence qu'un tribunal d'appel externe exerce sur le processus de décision de la Commission. Sans porter aucun jugement sur l'ancienne administration de la CAT, il faut reconnaître que la création d'une instance d'appel externe, grâce à laquelle les décisions des arbitres de la Commission sont réexaminées publiquement de façon courante par des spécialistes expérimentés de l'extérieur, devait entraîner une amélioration des modalités d'examen et – de là – des décisions rendues par la Commission. La preuve la plus évidente de ce phénomène est l'amélioration de la qualité des justifications écrites des décisions rendues par les commissaires d'audience, amélioration qu'on ne peut s'empêcher de remarquer de plus en plus fréquemment au Tribunal. La présence d'un tribunal d'appel externe a aussi une influence naturelle sur l'attention que la Commission apporte à s'assurer que les exigences de la Loi sont bien représentées dans ses nouvelles politiques.

Les statistiques de la Commission indiquent que, dans les cas relatifs à l'admissibilité à des indemnités et à leur montant, les appels accueillis ne relèvent de plus en plus que de divergences dans les conclusions de faits. Assez peu fréquents, les appels accueillis mettant en cause différentes interprétations du droit ou des principes directeurs sont de l'ordre de 10 pour cent seulement.

La période visée par ce rapport a été marquée par plusieurs changements dans les rangs des cadres supérieurs du Tribunal, et il convient de souligner la contribution exceptionnelle de trois personnes en particulier qui, après avoir tenu une place prépondérante lors de la création du Tribunal, ont continué leur chemin en acceptant de nouvelles responsabilités.

Le départ du premier président suppléant du Tribunal en avril 1988, *James R. Thomas*, a marqué la fin d'une collaboration professionnelle qui a grandement contribué à lancer le Tribunal dans la bonne direction. Comme je l'ai mentionné dans les rapports antérieurs, M. Thomas a été mon associé dès le début de cette entreprise. La nomination en juin 1988 de la nouvelle présidente suppléante, *Laura Bradbury*, qui était au nombre des premiers vice-présidents du Tribunal, a marqué le début d'une collaboration qui s'annonce tout aussi fructueuse.

David Starkman a été le premier avocat-conseil du Tribunal. Après avoir occupé ce poste pendant les trois premières années d'existence du Tribunal, il l'a quitté en septembre 1988 pour accepter un des postes de vice-président. Parmi les grandes réalisations de M. Starkman à titre d'avocat-conseil, mentionnons qu'il a mis sur pied et assuré le fonctionnement d'un concept nouveau et contesté, le Bureau des conseillers juridiques du Tribunal, qu'il a administré l'établissement de relations fonctionnelles entre le Tribunal et les représentants du patronat et des travailleurs et qu'il a fortement contribué au développement de rapports harmonieux entre le personnel du Tribunal et celui de la Commission. M. Starkman a exercé une grande influence pendant la période de formation du Tribunal. Elaine Newman, ancienne vice-présidente, lui a succédé au poste d'avocat-conseil du Tribunal.

Maureen Kenny, conseillère juridique du Tribunal depuis octobre 1985, a été nommée à l'un des postes de vice-président du Tribunal en juillet 1987. En tant que conseillère juridique du président, M^{me} Kenny était, entre autres, chargée d'administrer la procédure d'examen des ébauches de décisions (décrite dans le Premier rapport). Pendant les deux premières années d'existence du Tribunal, période au cours de laquelle les questions épineuses ne faisaient jamais défaut, elle a su assumer, en toute matière demandant un effort intellectuel, les rôles de mentor et de rédactrice auprès du président, des vice-présidents et des membres du Tribunal. Sa contribution aux normes de rédaction des décisions a joué un grand rôle dans l'évolution du Tribunal. Carole Trethewey s'est jointe au Tribunal en janvier 1988 pour succéder à M^{me} Kenny; c'est elle qui remplira dorénavant les fonctions de conseillère juridique du président, fonctions dont l'importance n'est plus à prouver.

INTRODUCTION

Le Tribunal d'appel des accidents du travail est un tribunal tripartite qui a été constitué en octobre 1985 pour entendre et décider les appels des décisions de la Commission des accidents du travail (CAT). Il s'agit d'un organisme autonome entièrement distinct de la Commission.

Le présent rapport constitue le troisième rapport annuel du président du Tribunal au ministre du Travail et aux divers groupes qui s'intéressent au Tribunal. Dans ce rapport, comme dans les deux précédents, j'ai l'intention de rendre compte des progrès réalisés par le Tribunal pendant la période visée ainsi que des questions qui, à mon avis, sont susceptibles de retenir l'attention du ministre ou des groupes qui s'intéressent au Tribunal.

Le *Premier rapport* et le *Deuxième rapport* visaient des périodes débutant à la date anniversaire de la création du Tribunal (soit, du 1^{er} octobre 1985 au 30 septembre 1986 et du 1^{er} octobre 1986 au 30 septembre 1987). Nous projections toutefois depuis le début de faire coïncider nos rapports annuels avec l'exercice financier du Tribunal, et c'est avec le présent rapport que nous mettons ce projet à exécution.

Cette transition est d'autant plus compliquée que le Tribunal est en voie de modifier son exercice financier. À compter du 1^{er} janvier 1989, nous passons de l'exercice régulier du gouvernement, qui va du 1^{er} avril au 30 mars, à un exercice coïncidant avec l'année civile. (L'exercice du Tribunal correspondra ainsi à celui de la CAT - période plus appropriée étant donné que le Tribunal est financé à même la caisse des accidents de la CAT.) Le présent rapport couvre la période du 1^{er} octobre 1987 au 30 décembre 1988, soit une période de 15 mois, afin de ne laisser aucun intervalle, mais les rapports suivants viseront des périodes correspondant à l'année civile.

Comme je l'ai mentionné dans les rapports précédents, le rapport annuel du Tribunal est le rapport du président, et non celui du Tribunal comme tel. J'entends notamment par là que le contenu subjectif du présent rapport, comme celui des rapports antérieurs, n'a pas été soumis à l'approbation de mes collègues. Je crois toutefois, comme dans le cas des deux premiers rapports, que les membres du Tribunal partagent, en grande partie, les opinions que j'y exprime. Lorsque ma conviction à cet égard n'est pas entière, je prends soin de l'indiquer.

Le présent rapport est, en fait, le rapport personnel du président du Tribunal au ministre du Travail et aux divers groupes qui s'intéressent au Tribunal parce que c'est au président et non au Tribunal comme tel que la Loi remet la responsabilité du fonctionnement de l'organisme.

REMERCIEMENTS

Le rendement du Tribunal continue, bien sûr, à refléter le talent et la loyauté de ses vice-présidents, de ses membres et de son personnel. On a généralement tendance à sous-estimer la contribution des vice-présidents et des membres d'un tribunal administratif, alors qu'on attribue habituellement à son président un rôle dans le processus décisionnel plus important que ne l'indiquerait une évaluation réaliste des limites que posent sa participation et son influence personnelles. Au cours de sa brève existence, le Tribunal d'appel a bénéficié du talent et de la loyauté sans limites de ses vice-présidents, de ses représentants des employeurs et des travailleurs et de son personnel. C'est à eux, avant tout, que le Tribunal doit le succès de ses réalisations. Au chapitre des remerciements, il serait négligent de ma part de ne pas souligner la collaboration et l'aide constantes que le Tribunal et moi-même avons reçues du ministère du Travail, de son ministre et de leur personnel ainsi que du président et du personnel de la Commission des accidents du travail.

L	LES QUESTIONS FINANCIÈRES	25
1.	Le Comité des finances et de l'administration	25
2.	Préparation du budget de 1989	26
3.	Vérifications	26
4.	États financiers des périodes allant du 1 ^{er} avril 1987 au 30 mars 1988 et du 1 ^{er} avril 1988 au 31 décembre 1988	26

ANNEXES

I	ANNEXE A	Enoncé du mandat, des objectifs et de la prise d'engagements
VIII	ANNEXE B	Les membres du Tribunal
XX	ANNEXE C	Évolution des relations entre le Tribunal et la Commission Section I: Directive de procédure n° 9
XXXXII	ANNEXE D	Statistiques sur la réception des nouveaux dossiers
XXXXV	ANNEXE E	Statistiques de production
XXXXIX	ANNEXE F	Détails budgétaires
XLV	ANNEXE G	Profil des représentants
XLVI	ANNEXE H	Analyse de la charge de travail hebdomadaire

TABLE DES MATIÈRES

INTRODUCTION	1
REMERCIEMENTS	1
RÉSUMÉ DU PRÉSIDENT	3
LE RENDEMENT DU TRIBUNAL	3
LES RETARDS AU STADE DE LA RÉDACTION DES DÉCISIONS	4
TEMPS MOYEN DE TRAITEMENT COMPLET	4
LES DÉPENSES DU TRIBUNAL	5
ÉNONCÉ DU MANDAT, DES OBJECTIFS ET DE LA PRISE D'ENGAGEMENTS	8
LE RAPPORT DÉTAILLÉ	9
A LA PÉRIODE VISÉE PAR LE RAPPORT	9
B CHANGEMENTS APPORTÉS À LA LISTE DES VICE-PRÉSIDENTS ET DES MEMBRES	9
C LES RELATIONS ENTRE LE TRIBUNAL ET LA COMMISSION	10
D QUI A LE DERNIER MOT -- UNE QUESTION ENCORE EN SUSPENS	10
E LES RELATIONS ENTRE LE TRIBUNAL ET L'OMBUDSMAN	12
F LES ASPECTS ADMINISTRATIFS	14
1. Faits saillants	14
2. Le système informatique	14
3. Le système informatique de gestion de cas	15
4. La dotation en personnel	16
5. Le Service du courrier et le Service des dossiers et des documents	16
6. Le Service de traitement de texte	16
7. Le Service de réception des nouveaux dossiers	16
8. Le Bureau des conseillers juridiques du Tribunal	17
9. Inscription des audiences	18
10. L'objectif de quatre mois	18
11. Le Bureau du conseiller juridique du président	19
12. Les audiences à l'extérieur de Toronto	19
13. Représentation aux audiences	19
G LE CENTRE D'INFORMATION	19
1. La bibliothèque	19
2. Les publications	20
H LA CHARGE DE TRAVAIL ET LA PRODUCTION	21
1. La charge de travail	21
2. La production du Tribunal	21
I LE RAYONNEMENT ET LA FORMATION	22
J LES SERVICES EN FRANÇAIS	22
K LES QUESTIONS DE FOND TRAITÉES AU COURS DE LA PÉRIODE VISÉE	23
1. Évaluation des pensions	23
2. Suppléments de pension	23
3. Maladie professionnelle	24
4. Le stress professionnel	24
5. Les problèmes de délais	25
6. Article 15 - Le droit d'intenter une action	25
7. Autres	25

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL
TROISIÈME RAPPORT
1987 - 1988

505 rue, University
7^e étage
Toronto, ONT.
MSG 1X4
(416) 598-4638



1987-1988

TROISIÈME RAPPORT

Tribunal d'appel
des accidents du travail
Workers' Compensation
Appeals Tribunal

120N
75
R28

Annual Report 1989

Workers' Compensation
Appeals Tribunal

Tribunal d'appel
des accidents du travail



ANNUAL REPORT

1989

505 University Avenue

7th Floor

Toronto, ON

M5G 1X4

(416) 598-4638 FAX: (416) 965-5134

ISBN: 0833-5451

© Ontario Workers' Compensation Appeals Tribunal, 1990

TABLE OF CONTENTS

INTRODUCTION	1
THE CHAIRMAN'S REPORT	2
THE TRIBUNAL'S PERFORMANCE: CHAIRMAN'S ASSESSMENT	2
BILL 162 AMENDMENTS: TRIBUNAL IMPLICATIONS	3
SECTION 86n AND THE FINAL-SAY ISSUE	4
HIGHLIGHTS OF THE 1989 CASE ISSUES	5
Pension Assessments	5
Pension Supplements	6
Transitional Supplement Provisions in Bill 162	6
Earnings Base	7
Occupational Disease	7
Occupational Stress	7
Chronic Pain and Fibromyalgia	8
The Relationship with the Ombudsman	9
The Compensable, Work-injury Relationship	9
Other	10
JUDICIAL REVIEW ACTIVITY	10
THE TRIBUNAL REPORT	13
VICE-CHAIRMEN, MEMBERS AND STAFF	13
THE APPEALS PROCESS	13
Receipt of Appeals & Intake Processing	13
Pre-hearing Processing	14
Scheduling of Hearings	15
Hearings	16
Post-hearing Processing	18
Decision Writing	19
Decision Release	19
INFORMATION DEPARTMENT	19
Library	19
Publications	20
PAY EQUITY	20
FINANCIAL MATTERS	21

APPENDICES

APPENDIX A

STATEMENT OF MISSION, GOALS AND OBJECTIVES	24
--	----

APPENDIX B

VICE-CHAIRMEN AND MEMBERS ACTIVE IN 1989	31
--	----

CHARTS AND GRAPHS

TREND ANALYSIS – INCOMING CASELOAD VS TOTAL CASE INVENTORY	3
THE APPEALS PROCESS	12
INCOMING CASELOAD BY TYPE FOR 1989	14
1989 INCOMING CASELOAD BY TYPE	15
REPRESENTATION PROFILE FOR DECISIONS RELEASED IN 1989	16
DISPOSITION OF CASES IN 1989	17
COMPARATIVE CASELOAD STATISTICS	18
STATEMENT OF EXPENDITURES	22

INTRODUCTION

The Workers' Compensation Appeals Tribunal is a tripartite tribunal established in 1985 to hear appeals from the decisions of the Ontario Workers' Compensation Board. It is a separate and self-contained adjudicative institution, independent of the Board.

This report is the Tribunal Chairman's and the Tribunal's annual report to the Minister of Labour and to the Tribunal's various constituencies. It describes the Tribunal's operational experience during the reporting period and covers particular matters which seem likely to be of special interest or concern to the Minister or to one or more of the Tribunal's constituencies. The reporting period for this report is the 1989 calendar year.

This is the first annual report to be titled "Annual Report". Its three predecessors, distinctively titled because of their special role in recording the Tribunal's formative years, were the "First Report", the "Second Report" and the "Third Report". They cover respectively the periods of October 1, 1985, to September 30, 1986; October 1, 1986, to September 30, 1987; and the fifteen month period from October 1, 1987, to December 31, 1988.

This Annual Report comprises, in effect, two reports: The Chairman's Report and the Tribunal Report. The Chairman's Report reflects the personal observations, views and opinions of the Chairman. The Tribunal Report covers the Tribunal's activities and financial affairs, and developments in its administrative policy and process.

THE CHAIRMAN'S REPORT

THE TRIBUNAL'S PERFORMANCE : CHAIRMAN'S ASSESSMENT

The Tribunal's Statement of Mission, Goals and Commitments adopted by the Tribunal in 1988 and reproduced as Appendix A to the Third Report and again as Appendix A to this Report continues to represent the criteria of performance which the Tribunal believes to be appropriate. I am satisfied that throughout 1989 the Tribunal successfully performed its Mission and made significant strides towards meeting its Goals, while continuing to be faithful to its Commitments.

The Tribunal's production goal is stated in the Statement of Mission, Goals and Commitments as: "...a total case turnaround time from notice of appeal or application to final disposition that averages four months, and in individual cases, unless they are of unusual complexity or difficulty, does not exceed six months."

The turnaround times are steadily improving. The reporting year saw the implementation of the restructuring approved at the end of 1988 and described in the Third Report together with other re-organization and process adjustment devoted particularly to decreasing the time the Tribunal spends, on average, during the pre-hearing preparation of each case. These efforts were complicated by personnel and administrative changes in the Tribunal Counsel Office and in Intake, and the full benefit was only beginning to be felt at the end of the year.

Nevertheless, in 1989 about 200 entitlement cases were completed from start to finish within roughly the four-month period, and the average turnaround time for decisions released in 1989 is substantially improved.

The continuing improvement in the Tribunal's overall production times may be seen in broad terms from the graph on the next page showing for each year since 1987 the total of new cases received during the year and the total case inventory as of the end of the year. The graph shows that the total case inventory at the end of 1989 is about 60 per cent below what it was at the end of 1987. Since the number of new cases received each year has remained relatively constant, this reduction is mainly reflective of improvements in the Tribunal's efficiency.

Out-of-Toronto cases present special difficulties as far as turnaround times are concerned by virtue of the impracticability of every-day scheduling of out-of-Toronto hearings and, as we now appreciate, limitations in the advocacy resources available in out-of-Toronto locations. As will appear from the report on the Tribunal's scheduling activities, we continue to experiment with various different strategies for improving the out-of-Toronto turnaround experience.

Whether with existing resources, and without sacrificing the quality of decision-making, it will in the end prove, in fact, to be possible to achieve a four-month, overall average turnaround time still remains unclear. We will be in a better position to answer that question by the end of 1990.

Incoming Caseload vs Total Case Inventory



The Tribunal's 1989 turnaround performance is to be assessed in the context of a year in which the Tribunal received 1,600 and disposed of 2,000 appeals or other types of applications including 1,125 by fully reasoned, written decision reached after full hearings.

I am especially pleased, as well, to be able to report that the Tribunal's turnaround performance in the particularly important area of decision-writing has consolidated the major 1988 improvement and produced even better decision-writing times in 1989. The details in this respect will be found in the Tribunal Report dealing with the Appeals Process.

BILL 162 AMENDMENTS : TRIBUNAL IMPLICATIONS

In assessing the Tribunal's performance and gauging its ability to meet and sustain adequate standards of production, it is naturally necessary in this 1989 Annual Report to take account of the Bill 162 amendments to the Workers' Compensation Act enacted just as 1989 came to a close. The reliability of my previous observations concerning the Tribunal's capacities are, of course, implicitly conditional upon the additional resources that will be needed to deal with what seems likely to be substantial additional burdens.

It is impossible at this point in time to estimate with confidence the full extent of Bill 162's ultimate impact on the Tribunal's workload. However, there can be little doubt that the impact will be substantial.

To begin with, appeals under the return-to-work part of the new legislation present a completely new jurisdiction for the Tribunal in which, ultimately, the number of appeals seems potentially very high. And while at this stage, the workload implications of the introduction of the wage-loss pension provisions are not as clear — these provisions replace existing provisions and from a workload perspective are likely to cut both ways — it is reasonable to expect that those changes too will ultimately produce a substantial net increase in the Tribunal's workload.

The four separate decisions that will now be required in every case of permanent partial disability seems likely, for instance, to be the source of significant increase in the number of appeals per case overall. I refer to the non-economic lump sum determination, and the first, second and final decisions on the wage loss, each of which is ap-

pealable. Furthermore, the value of what is at stake in individual appeals has been increased on average, since, under a wage-loss system, a higher proportion of appeals may be expected to at least potentially involve claims for full pensions. Accordingly, it may be anticipated that a higher proportion of claims rejected by the WCB's Hearings Officers will now be appealed.

It is also clear that the Tribunal will have to respond particularly quickly to the Bill 162 cases. This need is especially evident with respect to appeals in the new right-to-return-to-work cases, but it will also be important in the first round of appeals under the new wage-loss system for compensating permanent partial disabilities. The orderly development of that new system will depend on expeditious handling of the interpretation issues in the early cases.

The strategy the Tribunal has adopted for dealing with what Bill 162 will send its way, is to lay the groundwork in the next few months to accommodate a rapid 20-per-cent increase in the Tribunal's resources as soon as the first wave of Bill 162 cases begins to take shape. We propose to then work with those resources until we can make a realistic assessment of resource needs based on the developing experience.

SECTION 86n AND THE FINAL-SAY ISSUE

As was noted in the Third Report, as of the end of 1988 the key issue as to the ultimate effect of the WCB Board of Directors' powers under section 86n of the Act had yet to be addressed.

Decision No. 42/89 (1989), 12 W.C.A.T.R. 85, is the first decision in which the Tribunal was called upon to consider the final-say issue. In that case, the outcome depended on whether or not the Tribunal followed the Board of Directors' decision in its section 86n review of *Decision No. 72* (1986), 2 W.C.A.T.R. 28. (I will hereafter refer to a Board of Directors' 86n decision as an "86n review decision".) The issues of policy and general law dealt with in that review decision were the interpretation of the statutory definition of "accident" and the applicability of the section 3(3) presumption. (This is the only 86n review decision to have issued by the end of 1989.)

The specific question for the *Decision No. 42/89* Panel was the effect on subsequent Tribunal decisions of a Board of Directors' decision in an 86n review of a prior Tribunal decision. However, in considering that question, the 42/89 Panel felt that it was also important to first consider the effect of such a decision in the case in which it is made.

In a majority decision, the Tribunal indicated in *Decision No. 42/89* that as long as a Board of Directors' 86n review decision was properly authorized by the terms of section 86n and was not beyond the Board's jurisdiction by reason of being patently unreasonable, it was by law binding on the Tribunal in the case in which it was made. The 42/89 Panel decided, however, that an 86n review decision in one case was not binding in subsequent cases. In subsequent cases, the Tribunal was obliged to treat such decisions with deference and to follow them unless there were very compelling reasons not to do so, but it was not *bound* by the decision.

In *Decision No. 42/89* itself, the Tribunal concluded that, in respect of the definition of accident and its impact on the applicability of the presumption clause, the Board of Directors' review of *Decision No. 72* and the Tribunal's *Decision No. 72* itself were both so clearly wrong, to such substantial effect, that notwithstanding the deference intrinsically owed to an 86n review decision it was the Tribunal's duty in this case not to follow either decision.

The question of whether or not to subject *Decision No. 42/89* to a section 86n review was considered by the Board of Directors at its meeting on November 10, 1989. At that meeting, the Directors decided not to review the decision. For the time being, and pending the receipt of further decisions from the Tribunal on these issues, the WCB's staff were directed to implement the Tribunal's order in *Decision No. 42/89*, but to continue to administer the definition of accident and the applicability of the presumption clause in accordance with the Board of Directors' decision in its review of *Decision No. 72*.

The Directors also directed the Board's staff to conduct a general review of the Board's policies concerning the determination of entitlement to benefits in respect of workers' deaths from unknown or uncertain causes in employment circumstances — the problem with which the Tribunal had been faced in *Decision No. 42/89*.

The effect of the Board's decision not to review *Decision No. 42/89* is that for the time being the Board's adjudicators will continue to apply the interpretation of accident approved in the Directors' review of *Decision No. 72*, while the Tribunal may well follow the interpretation in *Decision No. 42/89*. Fortunately, the nature of the issue is such that not many cases will in fact be affected by this difference, but it is not a situation that should continue indefinitely.

It is my own view that the Board of Directors is right to confine the cumbersome and onerous 86n procedure to the business of resolving issues of major importance between the Board and the Tribunal only at the point where a full understanding of the nature and dimension of the issue has developed and the possibilities of reconciling or eliminating the conflict between the Tribunal and the WCB by other means or through other processes have been exhausted. It is that view of 86n which I take to be reflected in the Board of Directors' decision not to review *Decision No. 42/89* at this time.

It should be noted, of course, that the decision not to review *Decision No. 42/89* has also postponed the occasion for the Directors themselves to decide whether in their opinion section 86n ultimately gives the final say to the Tribunal or to the Board of Directors.

HIGHLIGHTS OF THE 1989 CASE ISSUES

The Third Report provided a sample of some of the important issues — legal, factual and medical — addressed by the Tribunal in 1988. The following is intended to update some of those issues and note a few new ones encountered in 1989. They are presented in no particular order of importance. Unfortunately, it is impossible in a report of this size to do more than highlight a few areas.

PENSION ASSESSMENTS

Tribunal panels are continuing to gain experience in the difficult area of pension assessments. The Tribunal's general approach to pension assessments and use of the rating schedule remains the same.

While the Tribunal often accepts the expert views of the Board's evaluation teams, the Tribunal has undertaken its own pension assessments in a number of cases where there was important new medical evidence, or where an aspect of the disability had not previously been assessed by the Board. For example, in *Decision No. 172/89* (1989), 11 W.C.A.T.R. 292, the Tribunal accepted the report of a senior psychologist which suggested that further tests should have been performed and awarded a pension for the worker's impairment of cognitive function which had not previously been assessed.

In several cases, the Tribunal has determined that a different benchmark from that applied by the Board more accurately reflected the worker's impairment of earning capacity. See *Decision Nos. 407/88* (1989), 12 W.C.A.T.R. 30 and *31/89* (1989), 10 W.C.A.T.R. 351.

In other cases, the Tribunal has found that it was more appropriate to refer the pension assessment back to the Board, and direct that it be carried out again in light of the Tribunal's findings.

The compliance with the requirements of the Act of the Board's policy on compensating multiple injuries (or entitlement to a "multiple factor" as it is sometimes called) has also been raised in a few cases. See *Decision Nos. 831/88* (1989), 10 W.C.A.T.R. 334 and *412/88* (June, 28, 1989)(Ont. W.C.A.T.). Another interesting case is *Decision No. 275/89I* (May 23, 1989)(Ont. W.C.A.T.) which commented on assessments for white finger disease.

PENSION SUPPLEMENTS

The Tribunal continues, of course, to view the Act as taking individual circumstances which affect the impact of an injury on a particular worker's earning capacity into account only through the pension supplements and older worker supplements provisions — not through the pension provisions themselves. (This will change with respect to permanent disabilities covered by the Bill 162 amendments.)

It now seems to be generally accepted that the Board has at least a discretion — and perhaps an obligation — to refuse a vocational rehabilitation supplement where the supplement would not have any rehabilitative purpose. An early case to the contrary appears now to have been an anomaly.

Decision No. 915 (1987), 7 W.C.A.T.R. 1 left open the question of whether this analysis would also apply to wage loss supplements; however, *Decision No. 466/89* (1989), 11 W.C.A.T.R. 369 held that such supplements were not intended to be permanent and also required a rehabilitative purpose.

The Tribunal has had occasion to consider entitlement to vocational rehabilitation supplements in a variety of situations. See, for example, *Decision No. 399/88* (1989), 10 W.C.A.T.R. 205 which dealt with a worker who relocated to an area of high unemployment to live with her family. *Decision No. 375/89* (1989), 11 W.C.A.T.R. 336 distinguished between entitlement to a temporary supplement for vocational rehabilitation and to discretionary rehabilitation payments. While a worker may not jeopardize his entitlement to a supplement by developing his own rehabilitation programme, he cannot demand that the Board pay discretionary benefits toward the cost of such a programme.

TRANSITIONAL SUPPLEMENT PROVISIONS IN BILL 162

The only provisions of Bill 162 to come into force during 1989 were the transitional sections providing for the payment of supplements. *Decision Nos. 729/89* (1989), 12 W.C.A.T.R. 251 and *916/89* (1989), 12 W.C.A.T.R. 279 found that these transitional provisions do not apply retroactively. Previously enacted supplement provisions have no force or effect after July 26, 1989, but remain in force respecting entitlement to benefits accrued prior to that date.

EARNINGS BASE

A number of cases have considered how the earnings base for calculating entitlement to benefits should be determined. For instance, should tips, bonuses, overtime, and employer-paid benefits (e.g., dental plans and free lunches) be included in the calculation of the earnings base? And for purposes of the pre-accident earnings calculation how should pre-accident lay-off periods for which unemployment benefits have been paid be treated? How should supplements paid during make-work programmes be treated? See *Decision Nos. 934/88* (1989), 11 W.C.A.T.R. 196, 994/881 (1989), 11 W.C.A.T.R. 210, 994/88 (1989), 12 W.C.A.T.R. 61 and 712/87 (1989), 12 W.C.A.T.R. 7.

OCCUPATIONAL DISEASE

Disabilities arising from exposure to chemicals or work processes continue to be an area of particular difficulty from an adjudicative perspective. The Tribunal's approach is to treat such disabilities as compensable where they fall within the statutory definition of "industrial disease" and related provisions, or within the disablement branch of the definition of "accident".

Occupational disease cases are frequently complicated because medical science has not advanced to the point where the causes of many diseases are fully known. In some cases, it may be impossible for medical science to even investigate the causation question because the conditions which are alleged to have caused the disability no longer exist and cannot be duplicated. Despite this lack of scientific certainty, the Tribunal is still required by statute to make a determination for compensation purposes. In such cases, a determination must be made on the balance of probabilities, as the statute requires. For an interesting discussion of this issue, see *Decision Nos. 94/87* (1989), 11 W.C.A.T.R. 20 and 214/89 (Mar. 22, 1989)(Ont. W.C.A.T.).

However, it has been held that where the etiology of the disease is entirely unknown, the statutory presumptions regarding industrial disease do not apply. In those circumstances, the disease also cannot be treated as a compensable disablement, since there is no demonstrated connection to the work-place. See *Decision No. 328/89* (1989), 11 W.C.A.T.R. 321.

OCCUPATIONAL STRESS

The Third Report noted the difficulties in adjudicating work-place stress claims and referred to the two-step inquiry suggested by the majority in *Decision No. 918* (1988), 9 W.C.A.T.R. 48:

- a) Was the worker subjected to work-place stress demonstrably greater than that experienced by the average worker?
- b) If not, was there "clear and convincing evidence" that the ordinary and usual work-place stress predominated in producing the injury?

Decision No. 536/89 (Sept. 6, 1989)(Ont. W.C.A.T.) accepted the *Decision No. 918* test, but found that the worker's state of mind was not compensable since it was not a true psychological disturbance but a reflection of her anger and frustration caused by a labour relations problem.

Decision No. 1018/87 (1989), 10 W.C.A.T.R. 82 reviewed *Decision No. 918* in detail and interpreted the reference to a "preponderance factor" as a response to the difficulties of adjudicating gradual mental stress claims and not an intention to create a higher standard of proof. *Decision No. 1018/87* took the view that in stress claims, as in other

claims, the question is whether the evidence is persuasive, on a balance of probabilities test, that the work is a significant contributing factor to the disability. Applying this standard, the Panel found that the stress was not compensable.

CHRONIC PAIN AND FIBROMYALGIA

Appendix C to the Third Report reviewed the development of the Tribunal's and Board's treatment of chronic-pain and fibromyalgia cases in some detail. The Appendix noted that the Tribunal had not yet had occasion to consider whether the Board's chronic-pain policy complied with the Act and that the Board had not yet completed its 86n review of the Tribunal's chronic-pain cases. This remains the case as well at the end of this reporting period.

The Tribunal has had occasion to consider whether it has jurisdiction to deal with chronic-pain claims in cases which have been treated as organic claims by the Board's adjudicators. *Decision No. 638/89I* (1989), 12 W.C.A.T.R. 221 held that the Tribunal has a broad jurisdiction to determine the entitlement to benefits generally and that it is preferable to assess entitlement on a "whole-person" basis. In that case, evidence of chronic-pain had been before the Hearings Officer and the Tribunal Panel concluded that the Hearings Officer decision must be treated as a final decision on the non-organic, as well as the organic, aspects. In *Decision No. 693/89I* (1989), 12 W.C.A.T.R. 236 the Tribunal found that the fact that a chronic-pain case had been referred back to the Board under *Practice Direction No. 9* (1987), 7 W.C.A.T.R. 444 did not deprive the Tribunal of its jurisdiction to consider the whole person. The fact that the Board had developed a new policy which might affect the issue did not retroactively deprive the Tribunal of its jurisdiction.

The Tribunal is not required to refer cases which, on appeal, are seen for the first time to involve a potential chronic-pain claim back to the Board because of any lack of jurisdiction. However, there may be cases where the Tribunal, in exercising its discretion to set the issue agenda on the appeal, determines that it is more appropriate for the Board to determine the chronic-pain issue first. [See, for example, *Decision No. 501/89* (Nov. 27, 1989)(Ont. W.C.A.T.)]

The implications and legitimacy of the "special confidence" concept which was developed in *Decision No. 915* were considered in *Decision No. 182* (1988), 10 W.C.A.T.R. 1. *Decision No. 915* stated that, because of the inherent difficulties in assessing the legitimacy of subjective pain complaints, it is right for adjudicators to feel the need for special confidence in the credibility of a chronic-pain claimant. The majority in *Decision No. 182* denied a chronic-pain claim because on the evidence it found it lacked this "special confidence"; however, the dissenting panel member criticized the concept.

The Third Report also noted that *Decision No. 18* (1987), 4 W.C.A.T.R. 21, which recognized fibromyalgia as a disabling condition caused by organic pathology which could result from an industrial accident, had not been included in the Board's 86n review of chronic-pain cases. Instead, the Board undertook a staff review of its policy concerning fibromyalgia. Based on the similarities between a diagnosis for fibromyalgia and one for chronic pain, the staff recommended and the Board of Directors approved the inclusion of fibromyalgia under the Board's chronic-pain policy, including its policy not to pay benefits prior to July 3, 1987, for chronic-pain conditions.

In another case, *Decision No. 669/87F* (1989), 11 W.C.A.T.R. 54, after reviewing considerable medical evidence, the Tribunal concluded that there is a pattern of signs and symptoms which are sufficiently consistent and clinically distinct to recognize fibromyalgia as a syndrome. It determined that it did not have to decide the appropriateness of including fibromyalgia in the Board's chronic-pain policy but that, in any event, the retroactivity limit in that policy was not applicable to fibromyalgia. Unlike

chronic pain, the Board had previously compensated fibromyalgia on a case-by-case basis; evidentiary problems rather than policy reasons had prevented compensation in fibromyalgia cases.

The Board of Directors subsequently agreed with the Tribunal's reasoning in *Decision No. 669/87F* and made benefits for fibromyalgia fully retroactive.

THE RELATIONSHIP WITH THE OMBUDSMAN

The Third Report noted that at the end of its reporting period the Tribunal had received the first report from the Ombudsman which supported a complaint. The Ombudsman recommended that the Tribunal reconsider a part of *Decision No. 95* (1986), 2 W.C.A.T.R. 61.

The Tribunal Chairman referred the Ombudsman's report to a panel, with the request that the panel determine whether:

- a) the fact that the Ombudsman had issued a report was in and of itself sufficient reason for the Tribunal to conclude that it was advisable to re-open a decision and embark on a reconsideration of that decision and
- b) if not, whether the content of this report provided sufficient reason to re-open this decision for the purpose of considering whether or not it should be changed in any particular. If the answer to either of the questions was yes, then that Panel was also to conduct the reconsideration of the case.

The Office of the Ombudsman was invited to participate in the hearings on these issues, but it declined to do so, as it did not consider itself a party to the Tribunal's process. The worker whose complaint the Ombudsman had, in part, supported, was represented at the hearing by a personal representative, not the Ombudsman.

Decision No. 95R (1989), 11 W.C.A.T.R. 1 determined that the Tribunal's normal two-step reconsideration process should apply when responding to an Ombudsman's recommendation. The Tribunal is required by statute to determine the initial "threshold" question of whether it is advisable to re-open a decision for the purpose of reconsidering, and it cannot delegate this decision, even to the Ombudsman. The Tribunal is also required to provide the parties with a full opportunity for a hearing before the Tribunal on this threshold question as well as on the reconsideration itself. Since the Ombudsman is a neutral entity, even the party whose complaint has been supported may wish to make additional submissions on these issues, as was the case in *Decision 95R*.

Decision No. 95R also discussed the different standards of review applied by the Tribunal as compared to the Ombudsman, and the different interests which each have. The Tribunal must consider not only the individual case but also the Tribunal's role in dispensing justice in a large number of cases. Therefore, the Tribunal has a high standard for re-opening final decisions for reconsideration.

The Panel determined that it was not advisable to re-open *Decision No. 95*, since even at face value the factual considerations and arguments presented by the Ombudsman and parties did not identify a defect so potentially significant as to justify reconsideration.

THE COMPENSABLE, WORK-INJURY RELATIONSHIP

As discussed previously, *Decision No. 42/89*, the first Tribunal decision to address the final-say issue, disagreed with the Board of Directors' views concerning the definition of "accident" and the applicability of the section 3(3) presumption clause. *Decision No. 42/89* was also a case which attempted to reconcile a number of Tribunal

decisions which appeared to give conflicting interpretations of the presumption clause and, in particular, of what standard of evidence is required to rebut the presumption of work-relatedness when the presumption applies. The Decision dealt with the difficult problem of how to approach the compensability issue in respect of a worker found dead, alone at a remote work site where the actual cause of the death cannot be determined.

Issues of work-relatedness may be found addressed in various forms in numerous decision issued in 1989, and they are far from being finally resolved.

The concepts of personal injury by accident *in the course of employment* and *arising out of employment* continued through 1989 to be particularly troublesome in the face of non-straightforward injury circumstances such as fights, drug abuse and the like.

OTHER

The Tribunal has also been concerned with a wide variety of other issues, ranging from the compensability of on-the-job heart attacks [e.g., *Decision Nos. 10/88* (1989), 10 W.C.A.T.R. 138, 11/89 (Mar. 7, 1989)(Ont. W.C.A.T.), and 42/89], to distinctions between independent operators and workers [e.g., *Decision Nos. 860/88* (June 20, 1989)(Ont. W.C.A.T.) and 813/89 (1989), 12 W.C.A.T.R. 269], to the question of whether an accident is so remotely connected to the work-place that the worker's right to sue is not removed by the Act [e.g., *Decision No. 701/88* (1989), 11 W.C.A.T.R. 150].

During this reporting period, there have also been a number of cases dealing with issues of particular interest to employers [for example, *Decision Nos. 845/88* (1989), 11 W.C.A.T.R. 154, 94/89 (1989), 11 W.C.A.T.R. 260 and 563/87 (Jan. 6, 1989)(Ont. W.C.A.T.), which dealt with penalty assessments, and *Decision Nos. 131/87* (1989), 10 W.C.A.T.R. 51 and 234/89 (1989), 12 W.C.A.T.R. 181, which dealt with employer classifications].

The Tribunal has also had occasion to consider the unique nature of its role as an investigative tribunal and to refine its practices and procedures. For example, *Decision No. 40/87* (1989), 10 W.C.A.T.R. 33 considered limits on cross-questioning where the worker-witness suffered from health problems; *Decision No. 1248/87R* (1989), 11 W.C.A.T.R. 103 addressed the function and legitimacy of the Tribunal's three-week rule for disclosing documents, and *Decision Nos. 355/88* (1989), 10 W.C.A.T.R. 194 and 580/87 (Dec. 28, 1988)(Ont. W.C.A.T.) considered the applicability of the legal doctrine of issue estoppel to Tribunal proceedings. In the context of considering issues respecting the re-payment of benefit overpayments, the Tribunal has also considered the availability under its "real merits and justice" mandate of the doctrine of innocent detrimental reliance. See *Decision No. 182*.

JUDICIAL REVIEW ACTIVITY

In 1989, the Appeals Tribunal was served with applications for Judicial Review regarding *Decisions Nos. 799/87* (Sept. 3, 1987)(Ont. W.C.A.T.) and 462/88 (Nov. 23, 1988)(Ont. W.C.A.T.R.). Both cases were section 15 applications. In *Decision No. 799/87*, the Tribunal found the worker's right of action was taken away by the Act. This application is still pending. In *Decision No. 462/88*, the Tribunal found it did not have the jurisdiction to determine whether the right to bring an action in Pennsylvania was taken away by the Act. The Divisional Court heard this case on February 7, 1990, and dismissed the application stating:

We are all of the view that the Appeals Tribunal did not err in concluding that the words "in Ontario" are necessarily implied in s.15 of the Workers' Compensation Act. The Appeals Tribunal carefully reviewed the issue in its reasons for decision and in our view decided the issue in its reasons for decision and in our view decided the issue correctly. There is very little we can add to that decision.

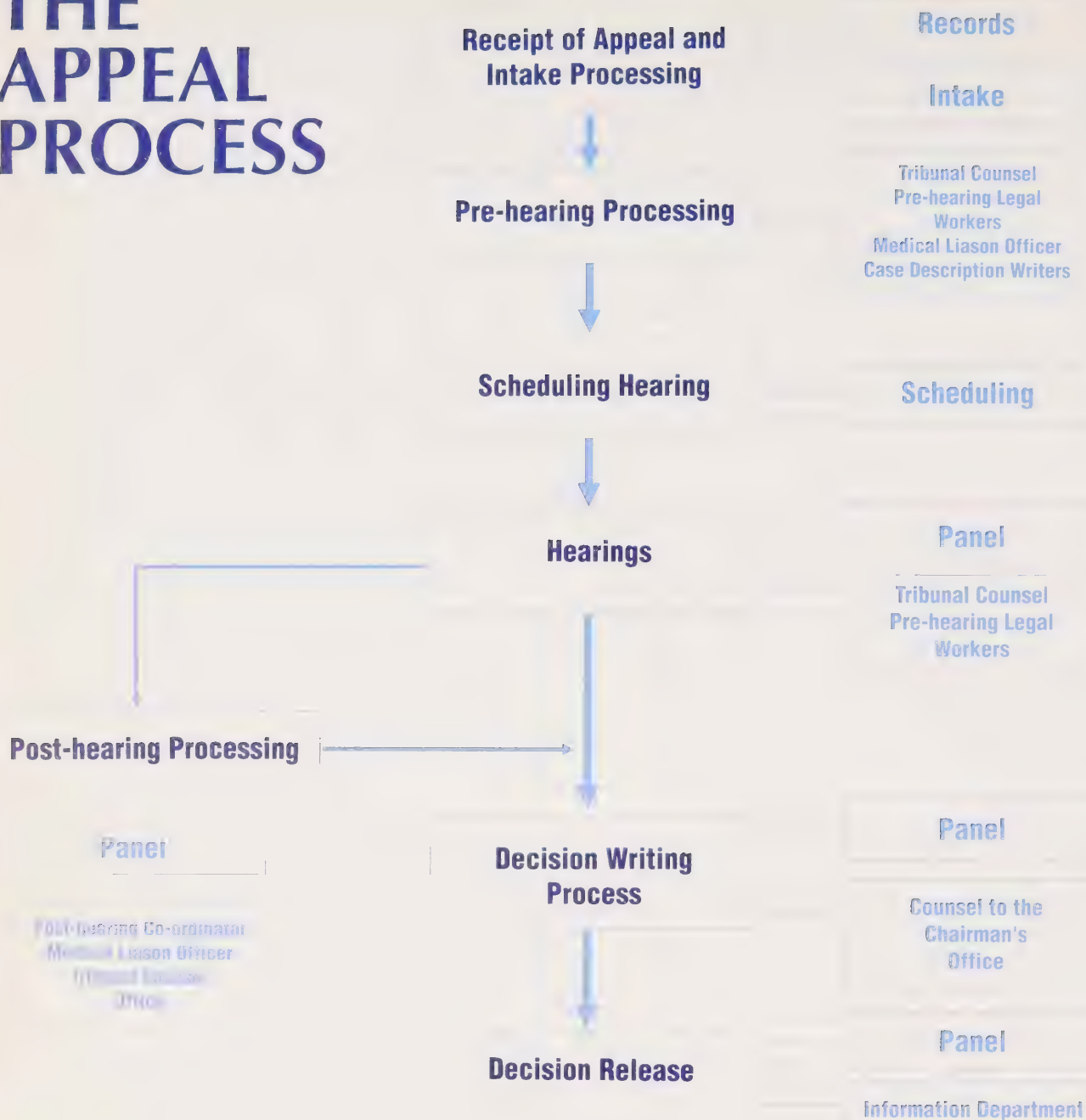
A Judicial Review application regarding *Decision No. 698L* (Feb. 17, 1987)(Ont. W.C.A.T.), a leave decision, was heard in Divisional Court on January 13, 1989. The court dismissed the application stating:

We do not think the tribunal is compelled to give leave simply because it might have come to a different decision. That doesn't necessarily mean there is good reason to doubt the correctness of the decision.

Four other applications for Judicial Review were withdrawn by the applicant in 1989 [*Decision Nos. 510/87* (Apr. 3, 1989)(Ont. W.C.A.T.), *60/88* (Mar. 18, 1988)(Ont. W.C.A.T.), *198/88* (Apr. 29, 1988)(Ont. W.C.A.T.), and *199/88* (Apr. 29, 1988)(Ont. W.C.A.T.)].

In addition to these Judicial Review applications, the Appeals Tribunal was made a party to an application to the Supreme Court of Ontario under Rule 14 of the Rules of Civil Procedure regarding *Decision No. 696/88* (1989), 10 W.C.A.T.R. 308. The decision in that case is reported in *Re Canada Post Corp and Canadian Union of Postal Workers et al.; Workers' Compensation Appeals Tribunal, Intervener* (1989), 70 O.R. (2d) 394.

THE APPEAL PROCESS



Special and Administrative Services

- Computer Services
- French Translation Services
- French Translation Services
- Information Services (Library and Publications)
- Personnel and Human Resources
- Reproduction and Mail Room
- Secretariat Services
- Training Services (Data Processing and Reports)
- Word Processing Centre

THE TRIBUNAL REPORT

VICE-CHAIRMEN, MEMBERS AND STAFF

Lists of Vice-Chairmen and Members, senior staff and Medical Counsellors active during the reporting period, as well as a record of roster changes, and résumés for newly appointed Vice-Chairmen and Members will all be found in Appendix B.

THE APPEALS PROCESS

RECORDS, IT, APPEALS & INTAKE PROCESSING

Records

The Records Centre includes the mail room and copy centre. It is responsible for providing administrative support to the Tribunal's operations.

In 1989, the Tribunal completed a review of its records system to determine compliance with the requirements of the Freedom of Information and Protection of Privacy Act. The Tribunal is currently considering the recommendations that emerged from this review process, including computerizing the records management system, implementing increased security for personal information and storing file information on microfiche.

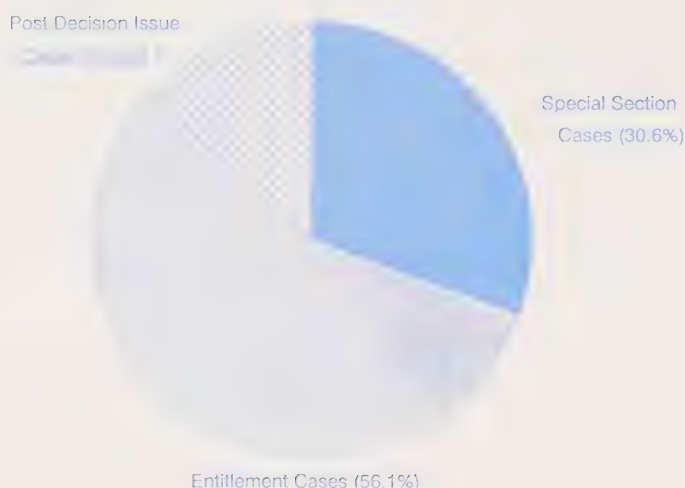
TCO/Intake

A major initiative was undertaken this year to integrate the Tribunal's Intake Department with the Tribunal Counsel Office.

The Intake Department, in addition to handling all incoming appeal applications and the public's questions about appeals and about the appeals process, has been responsible for all the Tribunal's "special section" cases. The special section cases include Section 77 access to information cases, Section 21 employer requests for medical examinations, and Section 15 cases on the right to maintain civil actions for damages. These cases constitute approximately 30 per cent of the Tribunal's incoming appeals and often involve complex legal questions.

The decision to integrate the two departments, which were formerly separate, was based on a desire to provide consistent treatment for all cases as well as speedier processing of cases. Special section cases now receive the same treatment as other cases, including the creation of a case description by the case description writers, and preparation for hearing by the pre-hearing legal workers. The integration was well under way by the end of the reporting period.

Incoming Caseload by Type for 1989



*Post Decision Issue Cases include reconsideration applications
Ombudsman's inquiries and judicial review cases

PRE-HEARING PROCESSING

Tribunal Counsel Office

The streamlining of the Tribunal's internal procedures, and the adoption of the average four-month turnaround goal for appeals in 1989, has resulted in the restructuring of the Tribunal Counsel Office, including the integration of the Intake Department. Lawyers in the Counsel office now supervise the special section cases and will continue in this role until the process of integration is complete.

The four-month goal requires that case descriptions be completed in all cases according to a standardized model and within certain time limits. The process of implementing and integrating the organizational changes that were necessary was well under way by the end of 1989.

Lawyers continue to review the more complex cases to determine whether there is a need for additional legal research, factual information, or medical evidence. The Medical Liaison Officer (MLO) reviewed about 300 case descriptions in 1989 to assist Counsel with the question of whether additional medical information is required, and if it is, whether it can be obtained from the treating physician or from a Tribunal section 86h Assessor.

1989 Incoming Caseload by Type

Description	1989 (12 Months)	% of Total
New Cases by Type of Appeal†:		
Special section cases:		
S.860	44	2.7
S.15	89	5.5
S.21	66	4.1
S.77	294	18
Subtotal:	493	
Entitlement and other cases:		
Pension		
Commutation	35	
Employer	28	
Entitlement		
and Other	701	43.5
Subtotal:		
Cases with no jurisdiction:		
Subtotal		
Total new appeals received	1,396	86.7
Post-decision issue cases:		
Ombudsman's Reconsideration application	103	6.4
Subtotal	215	13.3
TOTAL INCOMING CASES	1,611	100.0

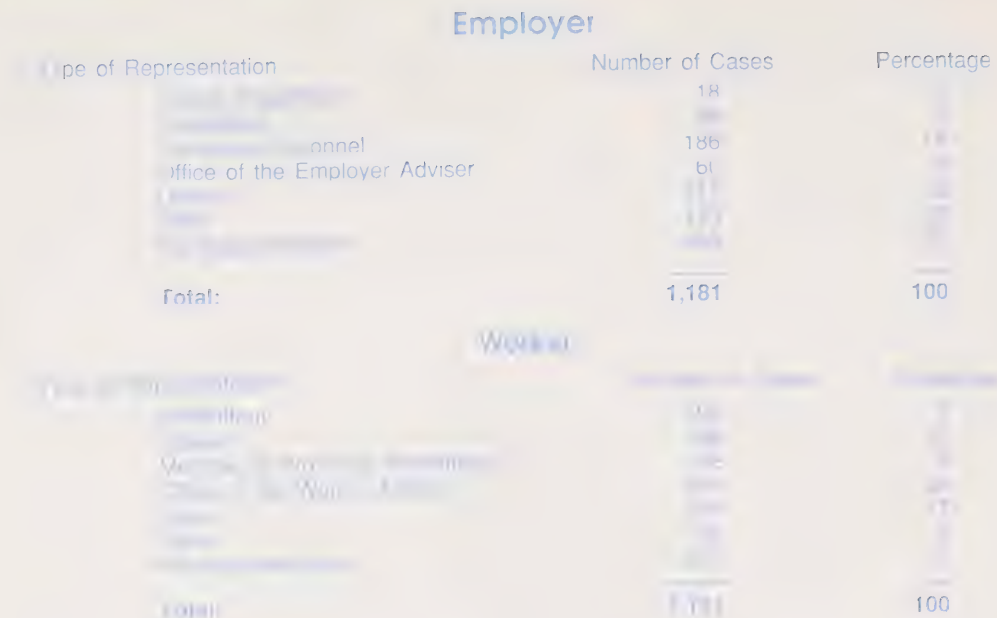
† Based on the date of receipt of WCB form

SCHEDULING OF HEARINGS

Beginning in January 1989, the Scheduling Department, under the supervision of the Appeals Administrator, moved to a system that includes:

- Scheduling cases immediately on completion of the case description so that even cases requiring additional pre-hearing work receive a hearing date and become "date driven".
- Scheduling cases according to a "modified" consent system, so that cases are scheduled as much as possible in accordance with the parties' convenience but in any event within a certain time period. If the parties cannot agree on a date, the cases are scheduled at a time convenient to the appellant.

Representation Profile for Decisions Released in 1989



The reorganization arising from the move to the four-month average turnaround goal generated a one-time "backlog" of cases in scheduling. In June 1989, there were 525 cases in scheduling; however, by the end of December 1989, that number had been reduced to 328 cases.

In 1989, about 50 per cent of the requests for hearings were for locations outside of Toronto. The waiting time for hearings in out-of-Toronto locations is two to three months longer than for Toronto hearings. In 1989, the Scheduling Department began to address this problem by bringing parties and their representatives to Toronto, if they agreed, and by scheduling additional hearings in certain locations. However, at the end of the reporting period, parties outside Toronto still waited longer for a hearing. Because of the projected Bill 162 caseload implications, the Tribunal is planning to add additional full-time panels, and it is expected that this development will help with the out-of-Toronto caseload.

The Tribunal has continued to schedule full- and part-time Panels to hear cases. Part-time Members participated in approximately 30 per cent of the cases in the reporting period.

Pre-hearing legal workers routinely contact the parties prior to each hearing to ensure that all materials required for the hearing have been provided and that the parties are ready to proceed. This contact has proved invaluable to the smooth running of the hearing process.

HEARINGS

The Tribunal scheduled 1,360 hearings in 1989; 1,061 of those cases had an oral hearing and 102 were considered on written submissions. The continuing strict "no adjournment" policy meant that only 2.3 per cent of cases were adjourned pre-hearing; a further small number were settled or withdrawn after being scheduled and prior to the hearing; 6.5 per cent were adjourned at the hearing.

The Tribunal Counsel Office lawyers attended hearings in about ten per cent of the cases. Generally, their in-hearing role was to examine expert medical witnesses and to assist the Panels with the legal questions in the more complex cases or in those cases that raised novel issues.

The increasing requests for hearings outside Toronto have been noted above. The problem this presents for expeditious processing of cases is not easily resolved. Often, there are only one or two worker representatives (usually from the Office of the Worker Adviser) available for workers in regions outside Toronto, so the answer is not simply to schedule more hearings in those locations — the representatives would be over-burdened. The strategy of inviting parties and their representatives to Toronto (and paying their expenses) is also only of limited advantage: again, the representatives are not always available to spend several days away from their offices. Also, OWA representatives handle the WCB hearings as well as WCAT hearings and have a heavy caseload in their own locations.

The Tribunal has taken some steps to provide parties outside Toronto with speedier access to hearings — in appropriate cases we bring parties and their representatives to Toronto, paying the expenses of the parties and their representatives; in 1989 we scheduled additional trips to some locations; and we have arranged conference-call hearings in straightforward cases, including those under Section 21 of the Act. The Tribunal will continue to explore ways of providing better service in this area in 1990.

The Tribunal instituted a "Motions Day" in 1988 and 1989 to provide a speedy process for certain cases under sections 21 and 77 of the Act which are "interlocutory" or preliminary in nature. These cases are scheduled on a date fixed by the Tribunal before a Panel which hears three or four similar cases on the same day. Parties have a fixed time to present their case, and Panels may deliver the decision orally.

Disposition of Cases in 1989

By the end of the reporting period, the Tribunal had also moved towards handling section 77 cases almost exclusively by way of written application. The parties prefer it, the process is faster than an oral hearing, and oral hearings are awkward when only one party has the disputed material.

We anticipate that with the integration of Intake and the Tribunal Counsel Office the trend to more expeditious handling of cases will accelerate in 1990.

French-Language Hearings

The Tribunal has two Panels that can conduct hearings in French. In 1989, the Tribunal held seven French hearings. In these cases, decisions are released in French, but an English version is available on request. The Tribunal now has a full-time French translator on staff who assists with the translation of documents for French hearings.

Comparative Caseload Statistics

	As at 31-Dec-1988	As at 31-Dec-1989
Cases at pre-hearing stage:	1,510	1,134
Post-hearing cases		
• Recessed	43	65
• Complete but on hold	101	138
• Ready to write decision	270	234
Cases at post-hearing stage:	414	437
TOTAL CASELOAD	1,924	1,571
Cases which are on hold and post-decision issue case		
	69	229
	129	147
TOTAL	398	376

POST-HEARING PROCESSING

About 20 per cent of the cases heard in 1989 required additional evidence, post-hearing. In those cases, Panels have found there is insufficient medical evidence to determine an issue, or that other kinds of information are required before a decision can be reached. There are also cases where it becomes apparent to the Panel, post-hearing, that further submissions from the parties or the Board are necessary before the decision can be fairly made.

The post-hearing co-ordinator in the Tribunal Counsel Office obtains the evidence required on the Panel's instructions or co-ordinates the submissions. In 1989, the co-ordinator made greater use of outside investigators in obtaining information and consequently the time taken in the post-hearing process was shortened considerably.

The post-hearing additional evidence is, of course, obtained after notice to the parties and with the parties being given full opportunity to respond to such evidence.

In 1989, there were 154 Medical Assessors who had been appointed as Order-In-Council appointments under Section 86h of the Act. The increased number of Assessors meant that Panels were able to obtain medical information post-hearing more quickly than before.

DECISION WRITING

The Office of the Counsel to the Chairman continued to review decisions in draft form. The Counsel to the Chairman's role has been described in earlier Annual Reports. In 1989, one additional full-time Counsel and one part-time Counsel were added, bringing the total to four. Counsel's role was expanded to provide increased research assistance to Panels, in addition to draft-decision review.

Beginning in January 1989, Panels agreed to attempt to release decisions, on average, within six weeks of the hearing date. Exceptions included the more complex cases or cases requiring additional evidence or submissions post-hearing. In 1989, the Tribunal released 1,181 decisions. The average release time for all decisions (from the point where they were ready to write to the release date) was 7.5 weeks. This represents a three-week improvement over the 1988 average. If the cases are broken down by type, special section cases are released on average within 4.8 weeks, following a hearing. Full-time Vice-Chairmen released their decisions in 1989 cases within 5.2 weeks on average. This represents a 27-per-cent improvement over 1988, and is well within the six-week average goal for the decision-writing process.

DECISION RELEASE

During the reporting year, the Tribunal implemented a new system of decision release. Decisions are now released through the Information Department within 24 hours of the Panel issuing the decision.

INFORMATION DEPARTMENT

LIBRARY

The Library provides reference and research services to Tribunal staff and the public. Reference questions are answered utilizing in-house computer databases and external databases, such as *Dialog*, *QL Systems*, *CAN/LAW* and *Westlaw*.

In order to meet the increasing requests for service by the public, the Library has established a readily identifiable central reference desk. Improved integration of the Information Department now allows Library staff to draw on the support of Publications lawyers when answering more legally complex queries.

The Library staff has trained other Tribunal personnel in the use of computer-assisted research on the Tribunal's own in-house database. Emphasis has shifted to encouraging training in the use of *WCAT ONLINE*, a far more powerful retrieval system which permits sophisticated searches of the full text of all Tribunal decisions.

PUBLICATIONS

The Publications department publishes materials designed to facilitate research of Tribunal decisions and to increase awareness of Tribunal processes. As of the end of the reporting period plans for a major restructuring of the Tribunal's publications have been completed. The new system will be implemented early in 1990. It features a new publication, the *Decision Digest Service*, which will replace the *Numerical Index of Decisions*.

The currency of the publications was much improved over the reporting period. Decisions are currently being summarized within a week of their release. Once the *Decision Digest Service* is in operation, the *Decision Summaries*, *Keyword Index* and *Annotated Statute* will be updated monthly rather than quarterly. Clearance of the backlog of cases to be published in the *WCAT Reporter* has also made that publication more current. These improvements have rendered the *Decision Subscription Service* redundant. It will be discontinued at the end of 1989.

Some new publications were made available in 1989. The *Keyword Guide* helps users to identify all the keyword terms that are potentially relevant to their searches of Tribunal decisions (this will be especially helpful considering the revisions to the *Keyword Index* that will be necessitated by the proclamation of Bill 162). *Researching Workers' Compensation Appeals Tribunal Decisions* describes the various Tribunal publications and databases and explains how to use the publications. *A Straightforward Guide to the Workers' Compensation Appeals Tribunal* is a plain language explanation of the Tribunal's function and procedures.

Plans are underway to introduce a Tribunal newsletter (*WCAT In Focus*). It will provide the Tribunal with the capacity to routinely communicate with its constituencies in a timely and efficient manner.

The following publications are available to assist in the research of Tribunal decisions:

- *Decision Digest Service*
- *Decision Summaries*
- *Keyword Index*
- *Annotated Statute*
- *WCAT Reporter*
- *Decision Subscription Service*

Other publications available are:

- *Workers' Compensation Appeals Tribunal Decisions*
- *Keyword Guide*
- *Researching Workers' Compensation Appeals Tribunal Decisions*
- *A Straightforward Guide to the Workers' Compensation Appeals Tribunal*

PAY EQUITY

The Pay Equity Act, which came into force on January 1, 1988, requires employers in the public sector to post a Pay Equity Plan by January 1, 1990. The Tribunal decided that it was reasonable for it to follow the Ontario Public Service pay equity plan for non-union (called "management and excluded") employees when that plan became available.

The Tribunal notified employees of the decision in December 1989. The plan was posted early in 1990 and will result in approximately 72 Tribunal employees receiving wage adjustments in 1990 to meet the Pay Equity Act.

The Tribunal's decision to follow the OPS plan allows the Tribunal to implement the intent and the spirit of the pay equity legislation by providing us with "male comparitors" for the female job classes.

FINANCIAL MATTERS

As we present this Annual Report, the Statement of Expenditure for the year ended December 31, 1989, has not yet been subject to audit.

The Appeals Tribunal is currently undergoing an internal audit by the Audit Department of the Ministry of Labour. The external auditors who performed an audit of the Statement of Expenditures in 1988 will again be invited to perform an audit of the Statement of Expenditures for the year ended December 31, 1989.

Statement of Expenditures

As at December 31st, 1989

Salaries and Wages	1989 Budget	1989 Actual
1310 Salaries & Wages - Regular	4,338.0	4,258.0
1320 Salaries & Wages - Overtime	36.0	54.2
1325 Salaries & Wages - Contract	298.8	193.7
1510 Temporary Help - Go Temp.	40.0	4.5
1520 Temp. Help - Outside Agencies	35.0	145.8
Total Salaries and Wages	4,747.8	4,656.3
Employee Benefits		
2110 Canada Pension Plan	0.0	56.1
2130 Unemployment Insurance	0.0	81.7
2220 Pub. Ser. Superannuation Fund	0.0	134.8
2230 P.S.S.F. Adjustment Fund	0.0	28.3
2310 Ontario Health Insurance Plan	0.0	49.6
2320 Suppl. Health & Hospital Plan	0.0	25.1
2330 Long-term Income Protection	0.0	20.0
2340 Group Life Insurance	0.0	8.1
2350 Dental Plan	0.0	24.1
2410 Workers' Compensation	0.0	0.1
2520 Maternity Supp. Benefit All.	0.0	18.7
2990 Benefits Transfer	0.0	1.2
Total Employee Benefits	740.2	447.8
Transportation & Communication		
3110 Courier/Other Delivery Charges	30.0	32.8
3111 Long Distance Charges	15.0	16.9
3112 Bell Tel. - Service, Equipment	50.0	68.7
3210 Postage	60.0	24.3
3610 Travel - Accommodation & Food	113.7	70.0
3620 Travel - Air	0.0	49.8
3630 Travel - Rail	0.0	2.4
3640 Travel - Road	0.0	26.9
3660 Travel - Conferences, Seminars	25.0	18.9
3680 Travel - Attendance (Hearings)	35.0	57.6
3690 Travel - Prof. & Pub. Outreach	10.0	4.1
3720 Travel - Other	1.0	4.8
3721 Travel - PT Vice Chair & Reps.	57.0	40.1
Total Transportation & Communication	396.7	417.3

Services	1989 Budget	1989 Actual
4124 External Education & Training	5.0	0.2
4130 Advertising - Employment	10.0	12.5
4210 Rentals - Computer Equipment	0.0	12.4
4220 Rentals - Office Equipment	10.0	1.2
4230 Rentals - Office Furniture	1.0	1.0
4240 Rentals - Photocopying	130.0	91.6
4250 Rentals - Office Space	1000.0	1,011.4
4261 Rentals - Hearing Rooms	20.0	22.6
4270 Rentals - Chair	1.0	0.0
4310 Data Process Service	10.0	0.0
4320 Insurance	0.0	0.0
4340 Receptions - Hospitality	27.0	32.8
4341 Receptions - Rentals	1.0	0.3
4350 Witness Fees	30.0	27.6
4351 Process Services - Subpoenas	7.0	5.7
4360 Per Diem Allow.-PT VC & Reps.	512.0	377.7
4410 Consultants - Mgt. Services	70.0	94.7
4420 Consultant - System Development	0.0	37.7
4430 Court Reporting Services	125.0	117.1
4431 Consultants - Legal Services	50.0	19.1
4435 Transcription	125.0	145.8
4440 Med. Fee - Per Diem/Retainer/Rep	225.0	132.8
4460 Research Services	0.0	0.0
4470 Print - Dec./Newsletters/Pamphlets	210.0	172.2
4520 Repair/Main. - Furnit./Off. Equip.	100.0	148.2
4710 Other - incl. Membership Fees	30.0	48.8
4711 Translation & Interpret. Ser.	20.0	44.3
4712 Staff Development - Course Fees	10.0	38.9
4713 French Translation Services	20.0	38.0
4714 Other French Costs	10.0	0.0
Total Services	2,699.0	2,633.9
Supplies & Equipment		
5090 Projectors, Cameras, Screens	0.0	0.0
5110 Computer Equip. incl. Software	0.0	0.2
5120 Office Furniture & Equipment	30.0	2.3
5130 Office Machines	0.0	0.0
5710 Office Supplies	100.0	139.6
5720 Books, Publications, Reports	50.0	51.5
Total Supplies & Equipment	180.0	193.6
Total Operating Expenditures	8,763.7	8,348.9
Capital Expenditures	100.0	148.5
Total Expenditures	8,863.7	8,497.4

APPENDIX A

STATEMENT OF MISSION, GOALS AND OBJECTIVES

THE MISSION

In its most fundamental terms, the Tribunal's mission is to perform appropriately the duties assigned to it by the *Workers' Compensation Act*.

These duties are both explicit and implicit. The explicit assignments define what the Tribunal must do and are, generally speaking, clear. They need not be repeated here.

The implicit obligations identify the manner of the Tribunal's operations. By definition, the nature of those obligations is subject to interpretation and debate, and it is important that the Tribunal's perceptions in that respect be known.

The implicit statutory obligations as the Tribunal understands them may be usefully described in the following terms.

1. The Tribunal must be competent, unbiased and fair-minded.
2. The Tribunal must be independent.

The obligation to be independent has three essential facets:

- (a) The maintenance of an arms-length, independent relationship with the Workers' Compensation Board.
 - (b) A commitment by the chairman, vice-chairs and members to not being inappropriately influenced by the popular views of workers or employers.
 - (c) A commitment by the chairman, vice-chairs and members to being undeterred by the possibility of government disapproval.
3. The Tribunal must utilize an appropriate adjudication process. To be appropriate, the Tribunal believes the process must generally conform with the following basic concepts:
 - (a) The process must be recognized as not being an "adversarial" process as that concept is generally understood in a common-law context.

(Unlike a court, the Tribunal is not engaged in resolving a contest between private parties. Appeals to the Tribunal represent a stage in the workers' compensation system's investigation of the statutory rights and benefits flowing from an industrial injury.

It is a stage of the system's process that is invoked on the initiative of a worker or employer but in this stage, as in earlier stages of the process, it is the system and not the worker or the employer which has the burden of establishing what the Act does or does not provide with respect to any reported accident.

The fact that it is the system which has the primary responsibility in this respect is reflected in the Board's and the Tribunal's explicit investigative mandates and their respective statutory obligations to decide cases on the basis of their "real merits and justice".

In legal terminology the process may be characterized as an "inquisitorial" as opposed to an "adversarial" process.

Despite the non-adversarial or inquisitorial nature of the process, it is a fact that the Tribunal's hearings normally take much the same form as do hearings in a typical adversarial process. To the uninitiated, the use of what is essentially an adversarial hearing format is confusing as to the fundamental nature of the Tribunal's process. In fact, however, the adversarial format merely reflects the Tribunal's tacit recognition that the participation of the parties in that manner will meet expectations in that regard and will, as well, be usually both the most effective and the most satisfying way for parties to, in fact, contribute to the Tribunal's search for the real merits and justice.

The Tribunal's commitment, in a non-adversarial process, to an essentially adversarial hearing format is also bolstered by its appreciation of the Canadian legal system's concept of what constitutes a "hearing". The legal system's understanding of the principles of natural justice that apply where there is, as there is here, a right to a hearing, are such that even in a non-adversarial process the style of hearing would not in law be allowed to stray far from the basic adversarial format.)

- (b) The non-adversarial nature of the process in which the Tribunal is engaged evokes the following three, particularly significant special process imperatives.
 - (i) The Tribunal's hearing panels have a responsibility to take such steps as they may find necessary to satisfy themselves that in any particular case they have such reasonably available evidence as they require to be confident as to the actual merits and justice in that case.
 - (ii) The issue agenda in any case must ultimately be determined by the hearing panels and not dictated by the parties.
 - (iii) The manner of conducting a hearing, while usually to be governed by rules and format of a standard nature, must be adaptable to the special hearing needs of any particular case as the hearing panel in that case may consider necessary or appropriate. Any such adaptations must, however, be consistent with a fair hearing and reflect proper regard for the integrity of general Tribunal rules and procedures that are conducive to effective and fair process from an overall perspective.
- (c) The adjudication process must be effective and fair from the parties' perspective.

It must allow the parties timely knowledge of the issues, a fair opportunity to challenge or add to evidence and/or to provide their own evidence, and a fair opportunity to advocate their views and to argue against opposing views.

- (d) The process must also be effective from the perspective of the Tribunal.

It must provide the Tribunal's panels with the evidence, the means of evaluating the evidence, and the understanding of the issues, which will permit them to decide with confidence on the real merits and justice of the case.

- (e) The process should not be more complicated, regulated, or formal (and, thus, not more intimidating to lay participants) than the requirements of effectiveness and fairness and the needs of reasonable efficiency dictate.
- (f) In the post-hearing phase, the decision-making process must provide full opportunity for effective tripartite decision-making and for the careful development of appropriate decisions.

To be appropriate, decisions must be written and fully-reasoned. They must conform to the rule of law and meet reasonable, general standards of decision quality. Applicable law must be given its due effect and the principles adopted in other Appeals Tribunal decisions must be shown appropriate deference. The goal of achieving like results in like fact situations must be sensibly pursued.

- 4. The process for dealing with applications, as distinguished from appeals, while conforming generally with the foregoing, must be subject to such variations as the special statutory provisions governing each of the various applications may anticipate.
- 5. The Tribunal must hold hearings and reach decisions in as timely a fashion as is reasonably possible given the foregoing process obligations.
- 6. The Tribunal must make all its decisions readily accessible to the public.
- 7. The Tribunal's services must be reasonably accessible in both the French and English languages.

GOALS

In pursuing its mission, the Tribunal has adopted the following specific goals.

- 1. Achieving a total case turnaround time from notice of appeal or application to final disposition that averages four months, and in individual cases, unless they are of unusual complexity or difficulty, does not exceed six months.
- 2. Providing a system which can, so far as is reasonably possible, meet the various implicit statutory imperatives regardless of the experience or capabilities in a particular case of the worker's or employer's representative, or the absence from the process of any party or representative.
- 3. Maintaining at all points of contact between the Tribunal and workers and employers and their representatives a welcoming, empathetic, non-intimidating and constructive professional environment — an environment grounded in implicit respect on the part of all Tribunal staff and members for the goals and motives of workers and employers involved in the Tribunal's processes and for the importance of the Tribunal's work on their behalf.
- 4. Maintaining a working environment for Tribunal staff that provides both challenging work and suitable opportunities for personal recognition, development and advancement, in an atmosphere of mutual respect.
- 5. Maintaining at all times a sufficient complement of qualified, competent, trained and committed vice-chairs and members.
- 6. Maintaining at all times a sufficient roster of qualified and committed medical assessors.

7. Maintaining at all times a sufficient complement of qualified, competent, trained and committed administrative and professional staff.
8. Providing the physical facilities, equipment and administrative support services necessary for the vice-chairs, members and staff to perform their responsibilities efficiently and in a manner which is conducive to job satisfaction and consistent with professional expectations.
9. Within such restrictions as may be implicit in the chairman's statutory obligation to take as his or her guidelines in the establishment of job classifications, salaries and benefits the administrative policies of the Government, compensating staff fairly and competitively relative to their responsibilities and the nature of their work.
10. Maintaining a constructive and appropriate working relationship with the medical profession and its members, generally, and with the Tribunal's medical assessors, in particular.
11. Maintaining a constructive and appropriate working relationship with the Board and its staff and with the Board's board of directors.
12. Maintaining a constructive and appropriate working relationship with the Minister and Ministry of Labour and with such other components of the government structure with which the Tribunal has dealings from time to time.
13. Providing the public and, in particular, workers and employers and their respective communities and representatives with such information about the Appeals Tribunal and its operations as is necessary for the effective utilization of the Tribunal's services.

COMMITMENTS

In the performance of the Tribunal's Mission and in the pursuit of its Goals, the Tribunal has recognized a number of matters to which it is effectively committed.

1. The Tribunal is committed to keeping the investigative and pre-hearing preparation activities of the Tribunal separate from its decision-making activities.

This is accomplished by means of a permanent department of full-time professional staff referred to as the Tribunal Counsel Office (the TCO). TCO's assignment in this regard is to perform the Tribunal's investigative and pre-hearing preparation work. This work is to be performed in accordance with general standing instructions of the Tribunal. In individual cases where pre-hearing investigation or preparation requirements appear to exceed such standing instructions, TCO will act in accordance with special instructions from Tribunal panels — panels whose members are not thereafter permitted to participate in the hearing and deciding of such cases.

2. The Tribunal is committed to Tribunal-monitoring, at the pre-hearing stage, of the identification of issues and the sufficiency of evidence.

As part of the commitment to separation of pre-hearing investigation and preparation activity from decision-making activity, this monitoring is normally carried out by the TCO pursuant to Tribunal instructions delivered in the manner described above.

(This commitment does not preclude variable strategies concerning the degree of pre-hearing monitoring and the amount of TCO initiative in the pre-hearing preparation, with respect to different categories of cases. It also contemplates the possibility of TCO not monitoring particular categories of uncomplicated cases.)

It is, of course, understood that the TCO's pre-hearing role does not diminish in any way the hearing panels' intrinsic rights and obligations in the hearing and determining of individual cases. Hearing panels have the final say in the identification of issues and, at a mid-hearing or post-hearing phase, the right to initiate and supervise the development or search for additional evidence, or to obtain further legal research or request additional submissions.

3. The Tribunal is committed to having the Tribunal represented by its own counsel at any Tribunal hearing where the Tribunal considers such representation necessary or useful.

4. In its internal decision-making processes, the Tribunal is committed to the maintenance of a tri-partite working environment characterized by mutual respect and by free and frank discussions based on non-partisan, personal best judgements from all panel members.

5. The Tribunal is committed to maintaining internal educational processes suitable for developing a Tribunal-wide, comprehensive appreciation of the nature and dimensions of emerging, generic, medical, legal or procedural issues.

6. The Tribunal is committed to the establishment and maintenance of a general workers' compensation information resource and library.

This resource and library is to be a sufficient and effective source of legal, medical, and factual information relevant to the workers' compensation subject. It shall provide access to information which is not conveniently assembled elsewhere, and which workers and employers, members of the public, professional representatives, and Members and staff of the Tribunal require if they are to truly understand the workers' compensation system and the issues which it presents, or be able to prepare on a fully informed basis for presenting or dealing with such issues in individual cases.

This information is to be readily accessible through electronic and other means.

7. The Tribunal is committed to the creation of a permanent, widely distributed and easily accessible, published record of the Tribunal's work.

This record is to consist of the selection of Tribunal decisions best calculated to assist worker or employer representatives to understand, in the preparation of their cases, workers' compensation issues and the Tribunal's developing position on such issues.

8. The Tribunal is committed to the review by the chairman, or by the Office of the Counsel to the chairman, of draft panel decisions.

This review is conducted for the purpose of ensuring — to the extent possible given the overriding hearing-panel autonomy, that the Tribunal's body of decisions complies reasonably with the general hallmarks of quality which the Tribunal has recognized.

9. The Tribunal is committed to devoting its best efforts to having Tribunal decisions comply reasonably with the following hallmarks of a good-quality adjudicative decision:

(a) It does not ignore or overlook relevant issues fairly raised by the facts.

(b) It makes the evidence base for the panel's decisions clear.

- (c) On issues of law or on generic medical issues, it does not conflict with previous Tribunal decisions unless the conflict is explicitly identified and the reasons for the disagreement with the previous decision or decisions are specified.
 - (d) It makes the panel's reasoning clear and understandable.
 - (e) It meets reasonable standards of readability.
 - (f) It conforms reasonably with Tribunal standard decision formats.
 - (g) From decision to decision the technical and legal terminology is consistent.
 - (h) It contributes appropriately to a body of decisions which must be, as far as possible, internally coherent.
 - (i) It does not support permanent conflicting positions on clear issues of law or medicine. Such conflicts may occur during periods of development on contentious issues. They cannot be a permanent feature of the Tribunal's body of decisions over the long term.
 - (j) It conforms with applicable statutory and common law and appropriately reflects the Tribunal's commitment to the rule of law.
 - (k) It forms a useful part of a body of decisions which must be a reasonably accessible and helpful resource for understanding and preparing to deal with the issues in new cases and for invoking effectively the important principle that like cases should receive like treatment.
10. The Tribunal is committed to obtaining in each case such reasonably available evidence as its hearing panels require if they are to be confident as to the appropriateness of their decision on any factual or medical issue.
11. The Tribunal is committed to holding hearings at appropriate out-of-Toronto locations.
- The commitment in this respect is that cases originating out of Toronto should be heard at locations which are reasonably convenient from both the worker's and employer's perspective. This commitment is subject to the limit of not imposing travel obligations on Tribunal members or administrative burdens on the Tribunal so onerous as to interfere with the effective operation of the Tribunal in other respects.
12. The Tribunal is committed to the payment of expenses and compensation in respect of lost wages arising from attendance at Tribunal hearings in accordance with the WCB's policies in that regard with respect to attendance at WCB proceedings.
13. The Tribunal is committed to paying for medical reports which serve a reasonable purpose in the Tribunal's proceedings.
14. The Tribunal is committed to being fiscally responsible in the management of its expenditures to the end that only moneys necessary for the performance of the Tribunal's mission and the accomplishment of the Tribunal's goals are, in fact, spent.

This document reflects the Tribunal's Mission, Goals and Commitments as at least implicitly understood from the Tribunal's inception.¹ Their expression in these particular terms was approved by the Tribunal as of October 1, 1988.

Goal No. 1. The original turnaround goal was six months.

APPENDIX B

VICE-CHAIRMEN AND MEMBERS ACTIVE IN 1989

FULL-TIME

DATE OF FIRST APPOINTMENT

Chairman

Ellis, S. Ronald	October 1, 1985
------------------	-----------------

Alternate Chair

Bradbury, Laura	June 1, 1988
-----------------	--------------

Vice-Chairmen

Bigras, Jean Guy	May 14, 1986
Bradbury, Laura	October 1, 1985
Carlan, Nicolette	October 1, 1985
Kenny, Lila Maureen	July 29, 1987
McIntosh-Janis, Faye	May 14, 1986
Moore, John P.	July 16, 1986
Onen, Zeynep	October 1, 1988
Signoroni, Antonio	October 1, 1985
Starkman, David K.L.	August 1, 1988
Strachan, Ian J.	October 1, 1985

Members Representative of Workers

Cook, Brian	October 1, 1985
Fox, Sam	October 1, 1985
Heard, Lorne	October 1, 1985
Lebert, Raymond J.	June 1, 1988
McCombie, Nick	October 1, 1985
Robillard, Maurice	March 11, 1987

Members Representative of Employers

Apsey, Robert	December 11, 1985
Jago, W. Douglas	October 1, 1985
Meslin, Martin	December 11, 1985
Nipshagen, Gerry M.	October 1, 1988
Preston, Kenneth	October 1, 1985
Seguin, Jacques	July 1, 1986
Guillemette, Karen	May 28, 1986

PART-TIME

Vice-Chairmen

Aggarwal, Arjun	May 14, 1986
Chapnik, Sandra	March 11, 1987
Farb, Gary	March 11, 1987
Faubert, Marsha	December 10, 1987
Friedmann, Karl	December 17, 1987
Hartman, Ruth	December 11, 1985
Lax, Joan L.	May 14, 1986
Leitman, Marilyn	December 17, 1987
Marafioti, Victor	March 11, 1987
Marcotte, William A.	May 14, 1986
Marszewski, Eva	May 14, 1986
McGrath, Joy	December 10, 1987
Sperdakos, Sophia	May 14, 1986

Stewart, Susan L.
Swartz, Gerald
Torrie, Paul
Warrian, Peter
Wydrzynski, Christopher

May 14, 1986
March 11, 1987
May 14, 1986
May 14, 1986
March 11, 1987

Members Representative of Workers

Acheson, Michelle
Beattie, David Bert
Byrnes, Frank
Drennan, George
Felice, Douglas H.
Ferrari, Mary
Fuhrman, Patti
Higson, Roy
Jackson, Faith
Klym, Peter
Lankin, Frances
Rao, Fortunato

December 11, 1985
December 11, 1985
May 14, 1986
December 11, 1985
May 14, 1986
May 14, 1986
May 14, 1986
December 11, 1985
December 11, 1985
May 14, 1986
December 11, 1985
February 11, 1988

Members Representative of Employers

Clarke, Kenneth
Gabinet, Mark
Howes, Gerald K.
Jewell, Donna Marie
Kowalishin, Teresa A.
Merritt, Allen S.
Ronson, John
Seguin, Jacques A.
Shuel, Robert
Sutherland, Sara

August 1, 1989
December 17, 1987
August 1, 1989
December 11, 1985
May 14, 1986
October 18, 1988
December 11, 1985
July 1, 1986
August 1, 1989
December 17, 1987

The following is a list of senior staff who were employed at the Appeals Tribunal during the reporting period.

Counsel to the Chairman

Carole A. Trethewey

Tribunal General Counsel

Elaine Newman – to June 15, 1989
Eleanor J. Smith – from December 1, 1989

(Acting) General Counsel

Janice Sandomirsky – June 16, 1989, to November 30, 1989

General Manager

Robert A. Whitelaw – to June 30, 1989

Head, Information Department

Linda Moskovits

SENIOR STAFF CHANGES

On June 16, 1989, Elaine Newman, the Tribunal's General Counsel resigned to take up a career in private practice. Janice Sandomirsky, one of the Tribunal Counsel Office's Senior Legal Counsel, assumed the position of Acting General Counsel while the recruiting process was completed by an internal selection committee. Eleanor J. Smith was appointed the Tribunal's new General Counsel, effective December 1, 1989. Eleanor came to the Tribunal from her position as Director of Appeals at the Ministry of Labour, where she was responsible for hearing and determining all ap-

peals from Ministry of Labour decisions under the Occupational Health and Safety Act, and with a background of government administrative law advocacy in the energy field.

Also, on June 30, 1989, Robert Whitelaw, the Tribunal's General Manager resigned to accept a position with the government of British Columbia. At that time, it was decided that we would not fill the vacancy but would, instead, take the opportunity to experiment with a more flattened management structure, with the General Manager's responsibilities being delegated to senior staff members. We have not, as yet, had enough experience to be confident that it will be sensible in the long term to permanently dispense with a General Manager position, and expect to be able to make that decision sometime towards the end of 1990.

MEDICAL COUNSELLORS

The Medical Counsellors have continued to assist the Counsel Office in determining what, if any, further medical investigation ought to be explored in order to ensure that Panels have enough medical information to understand the evidence before them in any particular case, and to understand where and why any controversies exist.

The Counsellors have also continued to contribute to the Tribunal's recruitment of candidates for the Medical Assessor Roster. This year has seen the creation of a number of generic discussion papers on a number of medical issues. The Counsellors have been of assistance, either authoring these papers, or assisting in finding appropriate specialists from the Assessor Roster to do so.

Dr. Brian Holmes (see Second Report, page 21), who previously coordinated the Medical Counsellors has taken a leave of absence to accept a position as Vice-Chancellor, Health Sciences for the University in the United Arab Emirates. Dr. Holmes was a founding Counsellor and was instrumental in assisting the Tribunal as it set up its medical resource bodies.

Dr. Holmes' leadership role has been assumed by Dr. Thomas P. Morley.

This year, Dr. Ian Macnab, Orthopaedic Surgeon, resigned for personal reasons. Dr. Macnab's assistance and keen interest in enhancing our understanding of orthopaedic issues, especially in our first few formative years has been greatly appreciated.

One of the Tribunal's 86h Assessors, Dr. W.R. Harris, has been performing the role of Orthopaedic Counsellor on an ad hoc basis. His other commitments do not permit him to officially assume the responsibilities of a Counsellor at this time.

This leaves the Tribunal with seven Counsellors.

The following is a list of the Tribunal's Medical Counsellors:

Dr. Douglas P. Bryce	Otolaryngology
Dr. John S. Crawford	Ophthalmology
Dr. W.R. Harris	Orthopaedics (Acting)
Dr. Fred Lowy	Psychiatry
Dr. Robert L. MacMillan	Internal Medicine
Dr. Thomas P. Morley	Neurology
Dr. Neil Watters	General Surgery

ASSESSORS

As reported in the Second Report, a second expanded list of Assessors was appointed on October 1988. This brought the total of medical assessors throughout the province to 154 - now less nine (mainly through retirement from practice). There are currently 14 assessor nominations in process, and their appointments are anticipated in the near future.

VICE-CHAIRMEN AND MEMBERS — RE-APPOINTMENTS

In 1989, the following full- and part-time Vice-Chairmen and Members were re-appointed to the Appeals Tribunal for the terms indicated below.

NAME DATE OF RE-APPOINTMENT AND TERM (IN YEARS)

FULL-TIME

Vice-Chairmen

Bradbury, Laura ¹	October 1	3
McIntosh-Janis, Faye	May 14	3

Members Representative of Employers

Guillemette, Karen	May 14	3
Nipshagen, Gerry ²	June 15	3
Seguin, Jacques	July 1	6 mos. full-time; 2.5 years part-time
Cook, Brian	October 1	3

PART-TIME

Vice-Chairmen

Lax, Joan	May 14	2
Marcotte, William	May 14	2
Sperdakos, Sophia	May 14	3
Stewart, Susan	May 14	3

Members Representative of Employers

Kowalishin, Teresa	May 14	3
--------------------	--------	---

Members Representative of Workers

Felice, Douglas	May 14	3
Ferrari, Mary	May 14	3
Fuhrman, Patti	May 14	3
Klym, Peter	May 14	3

In addition to her duties as a Vice-Chairman at the Appeals Tribunal, Laura Bradbury is continuing in her management position as Alternate Chair.

- 2 Mr. Nipshagen was first appointed to the Appeals Tribunal as a part-time Member representative of employers. He was appointed as a full-time Member in June to fill the vacancy created by the resignation of Karen Guillemette.

VICE-CHAIRMEN AND MEMBERS — APPOINTMENTS EXPIRED AND RESIGNATIONS

The following is a list of members who resigned or whose appointments expired during the reporting period.

Arjun Aggarwal, Vice-Chairman	(part-time)
Frank Byrnes, Tribunal Member representative of workers	(part-time)
Karen Guillemette, Tribunal Member representative of employers	(full-time)
Eva Marszewski, Vice-Chairman	(part-time)
Allen S. Merritt, Tribunal Member representative of Employers	(part-time)
Paul Torrie, Vice-Chairman	(part-time)
Peter Warrian, Vice-Chairman	(part-time)

VICE-CHAIRMEN AND MEMBERS — RESUMÉS

NEW APPOINTMENTS

Kenneth Clarke (Part-time Employer Member)

Mr. Clarke, a human resources consultant with his own consulting firm (dealing in non-workers'-compensation-related matters), spent 20 years in the food business as the Director of Human Resources at Thomas J. Lipton, Inc. In this position he was responsible for personnel and industrial relations matters. He is currently a member of the Government Affairs Advisory Committee of the Personnel Association of Ontario.

Gerald K. Howes (Part-time Employer Member)

Prior to his part-time appointment, Mr. Howes was employed by General Motors for 32 years. His position when retired was that of Workers' Compensation Personnel Representative. In this position, he spent the greater part of the period between 1972 and 1988 representing General Motors at all levels of workers' compensation claims and primary adjudication in the appeals process up to the Hearings Officer level.

Robert Shuel (Part-time Employer Member)

During the period between 1980 and 1989, Mr. Shuel was employed as Director and Secretary-Treasurer for Cuddy International Corporation. In addition to personnel administration, Mr. Shuel was involved in workers' compensation assessment and claims procedures. During this period, he was responsible for workers' compensation and claims management for a Windsor-based construction company where he was project payroll and office manager. Mr. Shuel was also involved in a workers' compensation educational role with the Agricultural Employers Council.

For brief résumés of the previously appointed full- and part-time Vice-Chairmen and Members, please refer to Appendix B of the Third Report.

NOMINATIONS RÉCENTES

Kenneth Clarke (membre à temps partiel représentant les employeurs)

M. Clarke exploite son propre cabinet d'experts-conseils en ressources humaines (pour les affaires non reliées à l'indemnisation des travailleurs victimes d'accidents du travail). Il avait auparavant exercé les fonctions de directeur des ressources humaines dans l'industrie alimentaire, plus précisément auprès de la compagnie Thomas J. Lipton Inc. À ce titre, il était responsable des questions relatives aux relations industrielles. Il est présentement membre du comité consultatif des affaires gouvernementales de l'association du personnel de l'Ontario.

Gerald K. Howes (membre à temps partiel représentant les employeurs)

Avant d'être nommé comme membre à temps partiel, M. Howes avait travaillé pendant 32 ans pour la compagnie General Motors. Au moment de prendre sa retraite, il y occupait le poste de représentant de la compagnie pour les cas d'indemnisation des accidents du travail. À ce titre, il a représenté General Motors à toutes les instances d'appels, de la première à celle du commissaire d'audience, et ce pendant la majeure partie de la période allant de 1972 à 1988.

Robert Shuel (membre à temps partiel représentant les employeurs)

De 1980 à 1989, M. Shuel était directeur et secrétaire-trésorier de Cuddy International Corporation. En plus de voir à l'administration du personnel, il participait à l'évaluation et au traitement des demandes d'indemnisation des travailleurs victimes d'accidents du travail. Il a aussi été responsable de l'indemnisation des travailleurs et de la gestion des demandes pour une compagnie de construction ayant son siège à Windsor, où il était directeur de la paye. M. Shuel a aussi joué un rôle d'éducateur en matière d'indemnisation des travailleurs auprès du conseil des employeurs agricoles.

Le lecteur trouvera à l'annexe B du *Troisième rapport* un abrégé du curriculum vitae des vice-présidents et membres à plein temps et à temps partiel nommés antérieurement.

RENOUVELLEMENT DE MANDAT

En 1989, les vice-présidents et les membres énumérés ci-après ont obtenu le renouvellement de leur mandat pour la période indiquée.

Nom Date du renouvellement Durée du mandat

VICE-PRÉSIDENTS

Bradbury, Laura¹ 1^{er} octobre 3 ans
McIntosh-Janis, Faye 14 mai 3 ans

Membres représentant les employeurs

Guillemette, Karen 14 mai 3 ans
Nipshagen, Gerry² 15 juin 3 ans
Séguin, Jacques 1^{er} juillet 6 mois (plein temps)
Cook, Brian 1^{er} octobre 3 ans

Vice-présidents

Lax, Joan 14 mai 2 ans
Marcotte, William 14 mai 2 ans
Sperdakos, Sophia 14 mai 3 ans
Stewart, Susan 14 mai 3 ans

Membre représentant les employeurs

Kowalishin, Teresa 14 mai 3 ans

Membres représentant les travailleurs

Felice, Douglas 14 mai 3 ans
Ferrari, Mary 14 mai 3 ans
Fuhrman, Patti 14 mai 3 ans
Klym, Peter 14 mai 3 ans

ANNULATION DE MANDATS ET DEMISSIONS

Suit une liste des membres qui ont démissionné ou dont le mandat a expiré pendant la période visée par le présent rapport.

Arjun Aggarwal, vice-président (temps partiel)
Frank Byrnes, membre représentant les travailleurs (temps partiel)
Karen Guillemette, membre représentant les employeurs (plein temps)
Eva Marszewski, vice-présidente (temps partiel)
Allen S. Merritt, membre représentant les employeurs (temps partiel)
Paul Torrie, vice-président (temps partiel)
Peter Warrian, vice-président (temps partiel)

En plus de ses tâches de vice-présidente, Laura Bradbury continue à assumer des fonctions de direction à titre de présidente suppléante

Arjun Nipshagen avait d'abord été nommé membre à temps partiel représentant les employeurs. Il a été nommé membre à plein temps en juin pour combler le poste laissé vacant par le départ de Karen Guillemette

CONSEILLERS MEDICAUX

par le directeur général. L'expérience n'a pas encore permis de déterminer s'il conviendrait d'abolir le poste de directeur général. Nous devrions être en mesure de prendre une décision à ce sujet vers la fin de 1990.

Les conseillers médicaux continuent à assister le Bureau des conseillers juridiques. Ils aident à déterminer s'il convient de mener des investigations médicales supplémentaires pour fournir aux jurys tous les renseignements nécessaires à la compréhension de la preuve qui leur est soumise ainsi que des sujets et des sources de controverse d'ordre médical.

Ils participent encore à la sélection des candidats à la liste des assessseurs médicaux du Tribunal. En outre, ils ont effectué de nombreux travaux de recherche génériques ou contribué à leur réalisation en trouvant les spécialistes voulus parmi les médecins inscrits sur la liste des assessseurs du Tribunal.

Le D^r Brian Holmes (se reporter à la page 21 du *Deuxième rapport*), qui coordonnait auparavant les activités des conseillers médicaux, a pris un congé autorisé pour accepter un poste de vice-chancelier des sciences médicales à l'université des Emirats arabes unis. L'un des premiers conseillers médicaux du Tribunal, le D^r Holmes a joué un rôle déterminant dans la formation du corps médical de soutien.

Le D^r Thomas P. Morley exerce maintenant les fonctions de chef de file qui relevaient précédemment du D^r Holmes.

Le D^r Ian Macnab, orthopédiste, a démissionné de son poste en 1989 pour des raisons personnelles. Nous lui savons gré de l'enthousiasme qu'il a manifesté et de l'aide qu'il a apportée en vue de favoriser une meilleure compréhension des questions relatives à son domaine de spécialité, surtout pendant les premières années d'existence du Tribunal.

Le D^r W.R. Harris, un des assessseurs nommés en vertu du paragraphe 86h de la Loi, assume le rôle d'orthopédiste-conseil ad hoc. Ses autres responsabilités ne lui permettent pas d'exercer officiellement ce rôle pour le moment.

Ces départs ont réduit à sept le nombre des conseillers médicaux du Tribunal. En voici la liste:

D ^r Douglas P. Bryce	Otolaryngologie
D ^r John S. Crawford	Ophthalmologie
D ^r W.R. Harris	Orthopédie (intérimaire)
D ^r Fred Lowy	Psychiatrie
D ^r Robert L. MacMillan	Médecine interne
D ^r Thomas P. Morley	Neurologie
D ^r Neil Watters	Chirurgie

ASSESSSEURS

Comme il est indiqué dans le *Deuxième rapport*, une seconde liste d'assesseurs plus complète avait été dressée en octobre 1988. Il y avait alors 154 assessseurs un peu partout dans la province. Neuf médecins ont depuis été rayés de cette liste, pour cause de retraite dans la majorité des cas. Quatorze médecins sont présentement en voie d'être nommés assessseurs et devraient bientôt être inscrits à la liste.

Membres représentant les travailleurs

- Acheson, Michelle
- Beatie, David Bert
- Byrnes, Frank
- Drennan, George
- Felice, Douglas H.
- Ferrari, Mary
- Fuhrman, Patti
- Higson, Roy
- Jackson, Faith
- Klym, Peter
- Lankin, Frances
- Rao, Fortunato

Membres représentant les employeurs

- Clarke, Kenneth
- Gabinet, Mark
- Howes, Gerald K.
- Jewell, Donna Marie
- Kowalishin, Teresa A.
- Merritt, Allen S.
- Ronson, John
- Séguin, Jacques
- Shuel, Robert
- Sutherland, Sara

Suit une liste du personnel cadre au service du Tribunal au cours de 1989.

Conseillère juridique du président

Carole A. Trethewey

Avocatesses générales du Tribunal

Elaine Newman

Eleanor J. Smith

Avocate générale intermédiaire

Janice Sandomirsky

Directeur général

Robert A. Whitelaw

Chef du Service d'information

Linda Moskovits

CHANGEMENTS AU SEIN DU PERSONNEL CADRE

L'avocate générale du Tribunal, Elaine Newman, a démissionné de son poste le 16 juin 1989 pour se lancer dans une carrière en pratique privée. Janice Sandomirsky, conseillère juridique principale du Bureau des conseillers juridiques du Tribunal, a assumé les fonctions d'avocate générale pendant qu'un comité de sélection interne procédait au recrutement d'un nouveau titulaire pour le poste. Eleanor J. Smith est entrée en fonction au poste d'avocate générale du Tribunal le 1^{er} décembre 1989. Avant de se joindre au Tribunal, Eleanor assumait les fonctions de directrice des appels au ministère du Travail. À ce titre, elle entendait et jugeait tous les appels interjetés contre les décisions rendues par le ministère en vertu de la *Loi sur la santé et la sécurité au travail*. Auparavant, Eleanor avait acquis l'expérience du droit administratif dans le secteur de l'énergie, auprès de la fonction publique.

Le directeur général du Tribunal, Robert Whitelaw, a démissionné de son poste le 30 juin 1989 pour accepter un poste au sein du gouvernement de la Colombie-Britannique. Le Tribunal a alors décidé de ne pas combler ce poste et de tirer parti de l'occasion qui s'offrait pour mettre à l'épreuve une nouvelle structure hiérarchique en déléguant aux cadres les responsabilités antérieurement assumées

VICE-PRÉSIDENTS ET MEMBRES EN FONCTION EN 1980

DATE DE LA PRÉMIÈRE RÉUNION

PLIN TIME

Président

Ellis, S. Ronald

Présidente suppléante

Bradbury, Laura

Vice-présidents

Bigras, Jean Guy

Bradbury, Laura

Carlán, Nicolette

Kenny, Lila Maureen

McIntosh-Janis, Faye

Moore, John P.

O'ne, Zeynep

Signoroni, Antonio

Starkman, David K.L.

Strachan, Ian J.

Membres représentant les travailleurs

Cook, Brian

Fox, Sam

Heard, Lorne

Lebert, Raymond J.

McCombie, Nick

Robilliard, Maurice

Membres représentant les employeurs

Apsey, Robert

Jago, W. Douglas

Meslin, Martin

Nipshagen, Gerry M.

Preston, Kenneth

Séguin, Jacques

Guillemette, Karen

Vice-présidents

Aggarwal, Arjun

Chapnik, Sandra

Farb, Gary

Faubert, Marsha

Friedmann, Karl

Hartman, Ruth

Lax, Joan L.

Leitman, Marilyn

Marafioti, Victor

Marcotte, William A.

Marszewski, Eva

McGrath, Joy

Sperdakos, Sophia

Stewart, Susan L.

Swartz, Gerald

Torrie, Paul

Wydrzynski, Christopher

Warrian, Peter

1^{er} octobre 1985

1^{er} juin 1988

14 mai 1986

1^{er} octobre 1985

1^{er} octobre 1985

29 juillet 1987

14 mai 1986

16 juillet 1986

1^{er} octobre 1985

1^{er} août 1988

1^{er} octobre 1985

1^{er} octobre 1985

1^{er} octobre 1985

1^{er} juin 1988

1^{er} octobre 1985

11 mars 1987

11 décembre 1985

1^{er} octobre 1985

11 décembre 1985

1^{er} octobre 1988

28 mai 1986

14 mai 1986

11 mars 1987

17 décembre 1987

14 mai 1986

11 mars 1987

10 décembre 1987

17 décembre 1987

14 mai 1986

11 mars 1987

14 mai 1986

10 décembre 1987

14 mai 1986

11 mars 1987

14 mai 1986

11 mars 1987

12. Le Tribunal s'engage à prendre en charge les dépenses engagées par les personnes qui participent à ses audiences et à leur verser des indemnités de perte de salaire conformément aux lignes directrices de la CAT en ce qui concerne la participation aux affaires qu'elle instruit.

13. Le Tribunal s'engage à payer les rapports médicaux jugés utiles lors des affaires qu'il instruit.

14. Le Tribunal s'engage à administrer ses dépenses en faisant preuve d'un sens de responsabilité financière de manière à ne dépenser que les fonds nécessaires à l'exécution de son mandat et à l'atteinte de ses objectifs.

Ce document reflète la compréhension que le Tribunal a acquise de son mandat, de ses objectifs et de sa prise d'engagements depuis sa création¹. Le Tribunal a approuvé le libellé des présentes le 1^{er} octobre 1988.

¹ seule exception est l'objectif n° 1. Le temps de traitement visé était initialement de six mois.

Cet examen vise à assurer, dans la mesure du possible et compte tenu de l'autonomie prépondérante des jurys d'audience, que les décisions du Tribunal sont à la hauteur des critères de qualité adoptés par le Tribunal.

9. Le Tribunal s'engage à faire tout son possible pour que ses décisions se conforment raisonnablement aux critères de qualité suivants :

(a) Elles tiennent compte de toutes les questions pertinentes soulevées par les faits présentés.

(b) Elles présentent clairement les preuves sur lesquelles le jury s'est fondé pour prendre sa décision.

(c) Elles n'entrent pas en contradiction avec les décisions antérieures du Tribunal relativement aux questions juridiques ou médicales générales, à moins que le désaccord ne soit présenté explicitement et que ses motifs ne soient expliqués.

(d) Elles présentent le raisonnement du jury de façon claire et compréhensible.

(e) Elles répondent à des normes raisonnables de clarté.

(f) Elles respectent les normes que le Tribunal s'est imposées quant à la forme des décisions.

(g) Elles renferment une terminologie technique et juridique uniforme d'une décision à l'autre.

(h) Elles s'insèrent de façon appropriée dans l'ensemble des décisions du Tribunal, ensemble de décisions qui doit être, autant que possible, cohérent.

(i) Elles ne perpétuent pas de conflits à l'égard de questions non litigieuses de nature juridique ou médicale. De tels conflits, qui peuvent survenir pendant le développement de points litigieux, ne peuvent caractériser l'ensemble des décisions du Tribunal à long terme.

(j) Elles se conforment aux lois applicables et à la common law et reflètent adéquatement l'engagement du Tribunal envers la primauté du droit.

(k) Elles contribuent à former un ensemble de décisions auquel il est possible d'avoir recours pour comprendre et se préparer à traiter les questions soulevées dans de nouveaux cas et pour se prévaloir de l'important principe selon lequel des cas de même nature devraient être traités de la même manière.

10. Le Tribunal s'engage à obtenir, pour chacun de ses cas, toutes les preuves qui peuvent être obtenues par des moyens raisonnables et dont les jurys peuvent avoir besoin pour assurer la justesse de leurs décisions quand il s'agit de questions médicales ou factuelles.

11. Le Tribunal s'engage à tenir les audiences qui ont lieu hors de Toronto dans des lieux appropriés.

Ainsi, les cas provenant de l'extérieur de Toronto devraient être entendus dans des lieux convenant autant que possible au travailleur et à l'employeur. Cet engagement sera respecté dans la mesure où il n'entraînera pas de frais de déplacement des membres du Tribunal ou de frais administratifs tels qu'ils nuiraient au bon fonctionnement du Tribunal.

2. Le Tribunal s'engage à exercer un contrôle sur l'identification des questions en litige et à déterminer s'il y a assez d'éléments de preuve à l'étape préalable à l'audience.

Étant donné que le Tribunal s'est engagé à garder ses travaux d'enquête et de préparation aux audiences à l'écart de ses travaux de prise de décision, c'est le BCJT qui exerce ce contrôle, conformément à des directives qui lui sont transmises de la manière expliquée ci-dessus.

(Cet engagement n'exclut pas les variations stratégiques dans le degré de contrôle avant l'audience et la portée de l'initiative du BCJT dans la préparation des audiences, en ce qui a trait aux différentes catégories de cas. Cet engagement permet aussi de ne pas soumettre certains cas peu compliqués au contrôle du BCJT.)

Il est bien entendu que le rôle du BCJT avant l'audience ne diminue en rien les attributions et les obligations intrinsèques des jurys en ce qui concerne l'audience et le jugement de chaque cas. Il appartient aux jurys d'audience d'identifier les questions en litige; ils sont en droit, à mi-audience ou au cours des étapes ultérieures, d'entreprendre et de superviser l'élaboration ou la recherche d'éléments de preuve supplémentaires, d'obtenir l'exécution d'autres enquêtes judiciaires et de demander la soumission d'autres renseignements lors de l'audience.

3. Le Tribunal s'engage à se faire représenter par son propre conseiller juridique à toute audience quand il estime une telle représentation nécessaire ou utile.

4. Le Tribunal s'engage à entretenir, dans ses travaux internes de prise de décision, une atmosphère de travail tripartite caractérisée par le respect mutuel et par une liberté d'expression fondée sur l'impartialité et l'exercice du meilleur jugement de tous les membres de ses jurys.

5. Le Tribunal s'engage à maintenir des programmes de formation internes favorisant, à l'échelle du Tribunal tout entier, la compréhension de la nature et des différents aspects des questions génériques, médicales et juridiques qui peuvent surgir.

6. Le Tribunal s'engage à établir et à maintenir un service d'information et une bibliothèque spécialisés dans le domaine de l'indemnisation des travailleurs.

Ce service et cette bibliothèque deviendront une source efficace et suffisante de renseignements juridiques, médicaux et factuels sur l'indemnisation des travailleurs qui pourraient être difficiles à obtenir autrement. Ils permettront aux travailleurs, aux employeurs, au public, aux représentants professionnels ainsi qu'aux membres et au personnel du Tribunal d'obtenir les renseignements dont ils ont besoin pour bien comprendre le système d'indemnisation des travailleurs et les questions qu'il soulève et de se préparer à traiter lesdites questions dans le cadre de cas spécifiques.

Ces renseignements seront facilement accessibles par le truchement de matériel électronique et d'autres sources.

7. Le Tribunal s'engage à créer un registre permanent de ses travaux, à le distribuer à grande échelle et à le rendre facilement accessible.

Ce registre comprendra les décisions du Tribunal jugées les plus susceptibles d'aider les représentants des travailleurs ou des employeurs à comprendre, lors de la préparation de leurs cas, les questions relatives à l'indemnisation des travailleurs et la position que le Tribunal est en train de prendre à cet égard.

8. Le Tribunal s'engage à faire examiner les décisions des jurys par le président ou par le Bureau du conseiller avant de les communiquer.

Il respecte cet engagement grâce à un service permanent composé d'un personnel à plein temps - le Bureau des conseillers juridiques du Tribunal (BCJT). La tâche du BCJT, en la circonstance, est d'effectuer les travaux d'enquête et de préparation aux audiences en suivant les directives générales du Tribunal. Lorsque lesdites directives générales semblent insuffisantes pour guider les travaux d'enquête et de préparations pour l'audition d'un cas spécifique, le BCJT obtient des directives spéciales des jurys du Tribunal. Les membres desdits jurys sont alors exclus de l'audition et de la prise de décision dans le cas en question.

1. Le Tribunal prend l'engagement de garder ses enquêtes et ses travaux de préparation aux audiences à l'écart de ses travaux de prise de décision.

LA PRISE D'ENGAGEMENTS

- En s'acquittant de son mandat et en poursuivant ses objectifs, le Tribunal a pu juger de l'importance d'un certain nombre de questions à l'égard desquelles il a pris des engagements formels.
12. Entretenir des relations professionnelles constructives et appropriées avec le ministre du Travail et son ministre et avec tout autre organisme gouvernemental avec lequel le Tribunal est appelé à traiter de temps à autre.
13. Renseigner le public et, surtout, les travailleurs, les employeurs ainsi que leurs représentants et représentants respectifs sur le Tribunal et son fonctionnement de manière à ce qu'ils puissent se prévaloir efficacement de ses services.
11. Entretenir des relations professionnelles constructives et appropriées avec la Commission, son personnel et son conseil d'administration.
10. Entretenir des relations professionnelles constructives et appropriées avec le corps médical et ses membres, en général, et avec les assessseurs médicaux du Tribunal, en particulier.
9. Rémunérer les employés de manière équitable et concurrentielle en fonction de leurs responsabilités et de la nature de leur travail, tout en respectant les limites implicites découlant de l'obligation statutaire qu'a le président de suivre les directives administratives du gouvernement en ce qui a trait à l'établissement des catégories d'emplois, des salaires et des bénéfices marginaux.
8. Fournir aux vice-présidents, aux membres et au personnel les installations, le matériel et les services administratifs leur permettant de s'acquitter efficacement de leurs responsabilités tout en ayant la satisfaction d'un travail bien fait, à la hauteur de leurs aspirations professionnelles.
7. Maintenir en tout temps un personnel de soutien administratif et professionnel qui soit à la fois qualifié, compétent, bien formé et motivé.
6. Maintenir en tout temps une liste suffisante de conseillers médicaux compétents et motivés.
5. Maintenir en tout temps un nombre suffisant de vice-présidents et de membres qualifiés, compétents, bien formés et motivés.
4. Maintenir un environnement qui soit stimulant pour les employés du Tribunal et qui leur offre des occasions de faire reconnaître leurs mérites personnels, de se perfectionner et d'obtenir de l'avancement, dans une atmosphère de respect mutuel.

(d) La procédure doit aussi être perçue par le Tribunal comme étant efficace. Elle doit fournir aux jurys du Tribunal les preuves, les moyens d'évaluer lesdites preuves et la compréhension des questions examinées afin qu'ils puissent juger en toute confiance du bien-fondé de chaque cas.

(e) Le processus ne doit pas être plus compliqué, réglementé ou solennel (et, par conséquent, pas plus intimidant pour les profanes) que ne l'exigent les besoins d'efficacité et d'équité.

(f) Après l'audience, le processus de prise de décision doit fournir le terrain à une prise de décision tripartite efficace et à l'élaboration soignée de décisions appropriées.

Pour être appropriées, les décisions doivent être écrites et entièrement motivées. Elles doivent respecter le principe de la primauté du droit et répondre à des normes raisonnables et générales de qualité. Elles doivent se conformer à la lettre de la loi applicable et tenir compte des autres décisions rendues par le Tribunal. Il faut en effet que l'objectif soit d'arriver à des conclusions semblables dans la résolution de litiges similaires.

4. Bien qu'elle doive généralement se conformer à ce qui précède, la procédure de traitement des demandes d'autorisation d'interjeter appel, telles qu'elles se distinguent des appels, doit être soumise aux changements que peuvent prévoir les dispositions statutaires régissant chacune des différentes demandes.

5. Le Tribunal doit tenir ses audiences et rendre ses décisions dans un délai aussi raisonnable que possible, compte tenu des contraintes découlant de la procédure qui précède.

6. Le Tribunal doit faire en sorte que le public puisse consulter toutes ses décisions. 7. Le Tribunal doit, dans la mesure du possible, offrir ses services en français et en anglais.

LES OBJECTIFS

Pour mener à bien son mandat, le Tribunal s'est fixé les objectifs suivants:

1. Parvenir à un temps de traitement des cas, depuis l'avis d'appel ou la demande jusqu'au règlement définitif, d'une durée moyenne de quatre mois et maximale de six mois par cas, exception faite des cas particulièrement complexes ou difficiles.

2. Fournir un système pouvant, dans la mesure du possible, lui permettre de remplir ses obligations statutaires implicites, quelles que soient l'expérience et les capacités du représentant du travailleur ou de l'employeur dans un cas particulier ou en dépit de la non-participation de toute partie ou de tout représentant.

3. Procurer un environnement professionnel qui soit accueillant et compréhensif tout en étant positif et rassurant à tous les points de contact entre le Tribunal, les travailleurs, les employeurs et leurs représentants. Cet environnement doit manifester un respect implicite de la part de tout le personnel et de tous les membres du Tribunal envers les buts et les motifs des travailleurs et des employeurs dont les cas sont soumis à l'examen du Tribunal et envers l'importance du travail qu'effectue le Tribunal en leur nom.

Elle doit fournir aux parties une connaissance opportune des questions en cause, une bonne occasion de récusar ou d'effortar la preuve examinée, de soumettre de nouveaux éléments de preuve, de présenter leur point de vue et de manifester leur opposition à l'égard des points de vue exprimés par la partie adverse.

(c) La procédure judiciaire doit être perçue comme étant efficace et équitable par les parties.

(iii) Bien qu'elles soient réglementées et normalisées, les modalités d'audience doivent se prêter aux modifications spéciales que le jury considère nécessaires ou souhaitables dans le cadre de toute affaire particulière. Toute adaptation du genre doit, toutefois, permettre une audience équitable et refléter un souci profond d'intégrité dans l'application des règles et des règlements généraux du Tribunal qui contribuent, dans l'ensemble, à une procédure efficace et juste.

(ii) Dans toute affaire, les questions en litige doivent être déterminées par les jurys d'audience et non dictées par les parties.

(i) Les jurys d'audience du Tribunal doivent prendre toutes les mesures qu'ils estiment nécessaires pour se convaincre qu'ils possèdent, dans le cadre de toute affaire, toutes les preuves dont ils ont besoin pour être certains de pouvoir en juger le bien-fondé.

(b) La nature non antagoniste de la procédure du Tribunal exige le respect des trois exigences particulièrement importantes qui suivent:

Dans le cadre d'une procédure non antagoniste, l'engagement du Tribunal à l'égard des audiences, qui ont un format essentiellement antagoniste, est aussi appuyé par le concept d'audience dans le système juridique canadien. Le système juridique considère que les principes d'impartialité et de loyauté dans les cas où l'audience constitue un droit, comme c'est le cas ici, sont tels qu'ils ne permettraient pas légalement, même dans le cadre d'une procédure non antagoniste, de s'écarter de la forme correspondant à la procédure antagoniste).

En dépit de la nature non antagoniste ou inquisitoriale de cette procédure, les audiences du Tribunal prennent normalement la forme d'audiences tenues dans le cadre d'une procédure antagoniste typique. En raison de ces caractéristiques essentielles, il est difficile pour le non-initié de saisir la nature fondamentale de la procédure du Tribunal. Cependant, la forme antagoniste d'audience reflète simplement le fait que le Tribunal reconnaît tacitement que la participation des parties permettra de répondre aux attentes entretenues à cet égard et s'avèrera également la façon la plus efficace et la plus satisfaisante pour les parties d'aider le Tribunal dans sa quête du bien-fondé réel et de la justice.

En termes juridiques, la procédure du Tribunal peut être dite "inquisitoriale" plutôt que "antagoniste".

Le fait que le système soit investi de la responsabilité première à cet égard est reflété par les mandats explicites d'investigation de la Commission et du Tribunal et par leurs obligations statutaires respectives de décider des cas en fonction de leur bien-fondé réel et de la justice.

Il s'agit d'une étape à laquelle le travailleur ou l'employeur peut avoir recours mais pendant laquelle, comme au cours des étapes précédentes, c'est au système, et non au travailleur ou à l'employeur, qu'il incombe de déterminer ce que la Loi prévoit ou ne prévoit pas dans le cas d'un accident quel qu'il soit.

ANNEXE A

ÉNONCÉ DU MANDAT, DES OBJECTIFS ET DE LA PRISE D'ENGAGEMENTS

LE MANDAT

Le mandat le plus fondamental du Tribunal est de s'acquitter de façon appropriée des obligations que lui confère la *Loi sur les accidents du travail*.

Ces obligations sont d'ordre explicite et implicite. Les obligations explicites, soit celles qui définissent ce que le Tribunal doit faire, sont en général énoncées clairement et n'ont donc pas à être répétées ici.

Les obligations implicites, soit celles qui déterminent le fonctionnement du Tribunal sont, par définition, sujettes à l'interprétation et au débat. Il est donc important que le Tribunal fasse connaître la perception qu'il a de ces dernières obligations.

Comme le Tribunal les comprend, les obligations statutaires implicites peuvent être décrites en ces termes:

1. Le Tribunal doit être compétent, impartial et équitable.
2. Le Tribunal doit être indépendant.

Cette indépendance se définit de trois façons:

- (a) Le maintien de transactions juridiques fondées rigoureusement sur la lettre du droit et l'indépendance à l'égard de la Commission des accidents du travail.

- (b) L'engagement de la part du président, des vice-présidents et des membres de ne pas se laisser influencer indûment par les opinions des employeurs ou des travailleurs.

- (c) L'engagement de la part du président, des vice-présidents et des membres de rester fermes devant la possibilité d'une désapprobation des autorités gouvernementales.

3. Le Tribunal doit avoir recours à un processus judiciaire approprié. À ce titre, le Tribunal croit qu'un tel processus doit se conformer aux concepts fondamentaux suivants:

- (a) Le processus doit être reconnu comme étant non antagoniste, dans le sens généralement donné à ce concept dans le contexte de la common law.

(Contrairement aux cours de justice, le Tribunal n'a pas pour fonction de résoudre des différends entre des parties privées. L'interjection d'appel au Tribunal constitue une étape de l'enquête sur les droits et les prestations statutaires d'une personne victime d'une lésion professionnelle à l'intérieur du système d'indemnisation des travailleurs.

4124 Programme de rayonnement	10,0	
4130 Publicité - recrutement	0,0	
4210 Location - matériel informatique	10,0	
4220 Location - matériel de bureau	10,0	
4230 Location - fournitures de bureau	1,0	
4240 Location - photocopieur	130,0	
4260 Location - bureaux	800,0	
4261 Location - salles d'audience	20,0	
4270 Location - autres	1,0	
4310 Traitement de données	10,0	
4320 Assurance	0,0	
4340 Réceptions - hospitalité	27,0	
4341 Réceptions - location	1,0	
4350 Indemnisation des témoins	30,0	
4351 Signification des brevets et assignations	7,0	
4360 Indemnités journalières - vice-présidents et membres à temps partiel	512,0	
4410 Experts-conseils - services de gestion	70,0	
4420 Experts-conseils - conception de systèmes	0,0	
4430 Services de sténographie judiciaire	125,0	
4431 Experts-conseils - services juridiques	50,0	
4435 Transcription	125,0	
4440 Indemnités journalières des médecins (provisions/rapports)	225,0	
4460 Services de recherche	0,0	
4470 Impression des décisions, bulletins et brochures	210,0	
4710 Autres - y compris droits d'adhésion	30,0	
4711 Services de traduction et d'interprétation	60,0	
4712 Perfectionnement professionnel - droits de scolarité	50,0	
4713 Services de traduction en français	90,0	
4714 Autres dépenses reliées aux services en français	0,0	
Total (services)	2 699,0	2 699,9
Fournitures et matériel		
5000 Fournitures et matériel		
5110 Matériel informatique et logiciels	30,0	
5120 Ameublement et matériel de bureau	30,0	
5130 Machines de bureau	0,0	
5710 Fournitures de bureau	100,0	
Total (fournitures et matériel)	160,0	160,0
Total (dépenses de fonctionnement)	8 763,7	8 348,9
Dépenses d'immobilisation	100,0	100,0
Total	8 863,7	8 497,4

État des dépenses au 31 décembre 1989

Dépenses		Total	
1989	1988	1989	1988
4 258,0	4 258,0	1310 Salaires et traitements - heures normales	1310 Salaires et traitements - heures normales
54,2	54,2	1320 Salaires et traitements - surtemps	1320 Salaires et traitements - surtemps
19,1	19,1	1325 Salaires et traitements - travailleurs contractuels	1325 Salaires et traitements - travailleurs contractuels
4,5	4,5	1510 Aide temporaire - gouvernement	1510 Aide temporaire - gouvernement
145,8	145,8	1520 Aide temporaire - agences de placement	1520 Aide temporaire - agences de placement
4 050,2	4 050,2	Total (salaires et traitements)	
Avantages sociaux		Total (avantages sociaux)	
2110 Régime de pensions du Canada	2110 Régime de pensions du Canada	2220 Caisse de retraite des fonctionnaires	2220 Caisse de retraite des fonctionnaires
2230 Fonds de rajustement, caisse de retraite des fonctionnaires	2230 Fonds de rajustement, caisse de retraite des fonctionnaires	2230 Régime de protection du revenu	2230 Régime de protection du revenu
2340 Assurance-vie collective	2340 Assurance-vie collective	2350 Assurance dentaire	2350 Assurance dentaire
2410 Indemnisation des accidents du travail	2410 Indemnisation des accidents du travail	2520 Prestations supplémentaires de maternité	2520 Prestations supplémentaires de maternité
2990 Transfert d'avantages sociaux	2990 Transfert d'avantages sociaux	Total (avantages sociaux)	
447,8	447,8	Transports et communications	
Total (avantages sociaux)		Total (avantages sociaux)	
447,8	447,8	3111 Interurbains	3111 Interurbains
3112 Téléphone - service, matériel	3112 Téléphone - service, matériel	3210 Affranchissement postal	3210 Affranchissement postal
3610 Déplacements - repas et hébergement	3610 Déplacements - repas et hébergement	3620 Déplacements - avion	3620 Déplacements - avion
3630 Déplacements - train	3630 Déplacements - train	3640 Déplacements - automobile	3640 Déplacements - automobile
3660 Déplacements - conférences et séminaires	3660 Déplacements - conférences et séminaires	3680 Déplacements - participation aux audiences	3680 Déplacements - participation aux audiences
3690 Déplacements - programme de rayonnement	3690 Déplacements - programme de rayonnement	3720 Déplacements - autres	3720 Déplacements - autres
3721 Déplacements - vice-présidents et membres à temps partiel	3721 Déplacements - vice-présidents et membres à temps partiel	Total (transports et communications)	
81,7	81,7	81,7	81,7
134,0	134,0	134,0	134,0
28,1	28,1	28,1	28,1
49,6	49,6	49,6	49,6
29,1	29,1	29,1	29,1
20,0	20,0	20,0	20,0
8,1	8,1	8,1	8,1
24,1	24,1	24,1	24,1
7,1	7,1	7,1	7,1
17,2	17,2	17,2	17,2
1,2	1,2	1,2	1,2
447,8	447,8	447,8	447,8

La division des publications projette également la publication d'un bulletin (*Gros plan sur le TAAAT*). Grâce à ce bulletin, le Tribunal sera en mesure de communiquer régulièrement avec les groupes qui s'intéressent à ses activités.

Voici les publications offertes pour faciliter les recherches portant sur les décisions du Tribunal:

- *Decision Digest Service* (répertoire des fiches analytiques)
- *Master List of Decisions* (liste principale des décisions)
- *Keyword Index* (index des mots-clés)
- *Section 15 Index* (index de l'article 15)
- *Keyword Guide* (guide des mots-clés)
- *WCAT Reporter* (recueil des décisions)

Le Tribunal offre aussi les publications suivantes:

- *Guide pratique du Tribunal d'appel des accidents du travail*
- *Compensation Appeals Forum*
- *Researching Workers' Compensation Appeals Tribunal* (recherche des décisions du Tribunal d'appel des accidents du travail)

ÉQUITÉ SALARIALE

La *Loi sur l'équité salariale*, qui est entrée en vigueur le 1^{er} janvier 1988, donnait aux employeurs du secteur public jusqu'au 1^{er} janvier 1990 pour établir un programme d'équité salariale. Le Tribunal a estimé qu'il convenait de suivre le programme d'équité salariale que la fonction publique de l'Ontario élaborerait pour ses employés non syndiqués.

Le Tribunal a informé ses employés de cette décision en décembre 1989. Le programme adopté, qui a été rendu public au début de 1990, entraînera des rajustements salariaux pour environ 72 employés du Tribunal.

Le programme de la fonction publique de l'Ontario permet au Tribunal de respecter l'esprit et la lettre de la *Loi sur l'équité salariale* en fournissant des paramètres de comparaison entre les classes d'emplois détenus par des femmes et ceux détenus par des hommes.

QUESTIONS FINANCIÈRES

Au moment de publier ce rapport, les états financiers de l'année terminée le 31 décembre 1989 n'avaient pas encore été soumis à l'examen des vérificateurs. Le Service de vérification interne du ministère du Travail procède actuellement à une vérification des affaires du Tribunal. Les vérificateurs externes qui ont examiné les états financiers de 1988 seront invités à vérifier les états de l'année terminée le 31 décembre 1989.

La bibliothèque fournit des services de documentation et de recherche au personnel du Tribunal et au grand public. Les renseignements documentaires sont obtenus au moyen d'une base de données maison et de bases de données externes, telles que *Dialog*, *QL Systems*, *CAN/LAW* et *Westlaw*.

La bibliothèque est maintenant pourvue d'un comptoir de références biblio-graphiques facile à localiser qui permet de faire face à l'augmentation des demandes de renseignements de la part du public. De plus, le Service d'information a été inté-gré plus étroitement à la bibliothèque de façon à permettre aux préposés d'obtenir l'aide des avocats de ce service lorsqu'ils ont à répondre à des questions complexes sur le plan juridique.

Le personnel de la bibliothèque a formé d'autres membres du personnel du Tribunal pour leur permettre de consulter la base de données maison. Toutefois, il place main-tenant l'accent sur l'utilisation du système *WCAT ONLINE* et assure des services de formation à cette fin. *WCAT ONLINE* est un système de recherche documentaire beaucoup plus puissant qui permet l'exécution de recherches poussées à partir du texte intégral de toutes les décisions du Tribunal.

PUBLICATIONS

Le division des publications publie des documents conçus en vue de faciliter la re-cherche portant sur les décisions du Tribunal et de faire connaître les formalités administratives du Tribunal. À la fin de 1989, le Tribunal avait élaboré un important projet de restructuration de ses publications. Ce projet de restructuration, qui doit être mis en oeuvre au début de 1990, prévoit le remplacement du *Numerical Index of Decisions* (index numérique des décisions) par une nouvelle publication intitulée *Decision Digest Service* (répertoire des fiches analytiques).

Au cours de 1989, la division des publications est parvenue à réduire considérable-ment l'échec de publication. Les sommaires des décisions sont actuellement rédigés dans la semaine suivant la communication des décisions. Une fois que le ré-pertoire des fiches analytiques sera publié, les publications intitulées *Decision Summaries* (sommaires des décisions), *Keyword Index* (index des mots-clés) et *Annotated Statutes* (statut annoté) seront mises à jour mensuellement plutôt que trimestriellement. Enfin, l'élimination des décisions en souffrance devant être publiées dans le *WCAT Reporter* (recueil des décisions-clés du Tribunal) a rendu cette publication plus actuelle. Le *Decision Subscription Service* (service d'abonnement aux décisions), qui était devenu redondant en raison des changements apportés, a été sup-primé à la fin de 1989.

Quelques autres publications ont vu le jour en 1989. Le *Keyword Guide* (guide des mots-clés) a été compilé afin de permettre une recherche exhaustive de toutes les va-riantes possibles des termes pouvant être pertinents aux questions examinées. Cette publication s'avérera particulièrement utile vu les révisions qui devront être appor-tées au *Keyword Index* (index des mots-clés) comme suite à la proclamation de la Loi 162. Un feuillet intitulé *Researching Workers' Compensation Appeals Tribunal Deci-sions* (à la recherche des décisions du Tribunal d'appel des accidents du travail) décrit les diverses publications et base de données du Tribunal et en explique l'utilisation. Enfin, la brochure intitulée *Guide pratique du Tribunal d'appel des accidents du travail* donne en langage simple un aperçu du rôle et des procédures du Tribunal.

Environ 20 pour cent des cas entendus en 1989 ont nécessité la quête d'éléments de preuve supplémentaires après l'audience. Dans ces cas, les jurys estimaient que la preuve médicale était insuffisante ou qu'ils avaient besoin de renseignements supplémentaires avant de pouvoir trancher la question en litige. Dans d'autres cas, les jurys en étaient venus à la conclusion qu'ils devaient obtenir d'autres arguments de la part des parties ou de la Commission avant de pouvoir rendre une décision en toute équité.

Un membre du personnel du Bureau des conseillers juridiques du Tribunal est affecté à la coordination du traitement des cas au stade postérieur à l'audience. En 1989, la coordonnatrice a eu recours plus souvent qu'auparavant à des enquêteurs du secteur privé pour obtenir les renseignements requis. Cette façon de procéder a permis de réduire considérablement le temps de traitement au stade postérieur à l'audience.

Evidemment, le Tribunal notifie les parties avant d'obtenir des renseignements supplémentaires après l'audience, et il les invite à présenter leurs propres observations au sujet de la preuve ainsi obtenue.

En 1989, le Tribunal avait à sa disposition 154 assessseurs médicaux qui avaient été nommés par décret en vertu du paragraphe 86h de la Loi. Les jurys pouvaient ainsi obtenir plus rapidement que par le passé les renseignements médicaux dont ils avaient besoin au stade postérieur à l'audience.

RÉDACTION DES DÉCISIONS

Le Bureau du conseiller juridique continue à revoir les ébauches des décisions. En 1989, ce bureau a retenu les services d'un autre conseiller à plein temps et d'un conseiller à temps partiel, ce qui porte leur nombre à quatre. Le rôle du conseiller, qui a été décrit dans des rapports antérieurs, a été quelque peu modifié. Il assiste davantage les jurys dans leurs recherches, en plus d'examiner les ébauches des décisions.

Les jurys avaient convenu qu'ils tenteraient de communiquer leurs décisions dans les six semaines suivant la tenue des audiences, et ce, à compter de janvier 1989. Les cas plus complexes et les cas nécessitant la quête d'éléments de preuve supplémentaires au stade postérieur à l'audience n'étaient pas visés par cet objectif. En 1989, le Tribunal a communiqué 1 181 décisions. À la fin de 1989, le temps moyen de communication des décisions (du moment où les jurys étaient prêts à rédiger à celui de la communication) était de 7,5 semaines, soit trois semaines de moins qu'en 1988. La répartition des cas par catégories révèle que les décisions relatives aux demandes relevant de dispositions particulières de la Loi ont été communiquées en moyenne 4,8 semaines après l'audience et que les vice-présidents à plein temps ont communiqué leurs décisions en dedans de 5,2 semaines en moyenne, ce qui est bien en deçà de l'objectif de six semaines visé pour la rédaction des décisions. Il s'agit aussi d'une amélioration de 27 pour cent par rapport à 1988.

COMMUNICATION DES DÉCISIONS

Le Tribunal a adopté un nouveau système pour communiquer ses décisions. Elles sont maintenant communiquées par le truchement du Service d'information dans les vingt-quatre heures suivant leur émission par le jury.

Statistiques comparatives sur la charge de travail

Le Tribunal dispose de deux jurys pouvant tenir des audiences en français. En 1989, le Tribunal a tenu sept audiences en français. Lorsque l'audience est tenue en français, la décision est communiquée en français, mais elle est aussi fournie en version anglaise sur demande. Le Tribunal a maintenant à son service une traductrice à plein temps qui est chargée, entre autres, de la traduction des documents en vue des audiences en français.

Audiences en français

L'intégration du Service de réception des nouveaux dossiers au Bureau des conseils juridiques du Tribunal devrait entraîner un traitement encore plus expéditif des cas en 1990.

À la fin de 1989, le Tribunal avait pris des mesures en vue de traiter les requêtes en vertu de l'article 77 exclusivement par le truchement de demandes écrites. Les parties préférèrent ce genre de procédure étant donné que leur cas est ainsi traité plus rapidement que s'il était entendu en audience et qu'elles évitent ainsi les difficultés pouvant survenir lorsqu'une seule partie est en possession des documents faisant l'objet du litige.

En 1988 et en 1989, le Tribunal a commencé à tenir des journées d'audition des motions afin d'accélérer le traitement des cas relevant des articles 21 et 77 de la Loi. Ces cas, qui sont de nature interlocutoire ou préliminaire, sont inscrits en vue d'une audience devant un jury qui entend trois ou quatre requêtes similaires au cours d'une même journée. Les parties ont un temps limité pour présenter leur cas, et le jury peut rendre sa décision oralement.

prohibant les ajournements. Un pourcentage encore inférieur de cas ont fait l'objet d'un retrait ou d'un règlement avant audience. Enfin, 6,5 pour cent des cas ont été ajournés lors de l'audience.

Les avocats du Bureau des conseillers juridiques du Tribunal ont assisté aux audiences dans environ dix pour cent des cas. En général, ils ont eu pour tâche d'interroger des experts médicaux et d'aider les jurys saisis de cas comportant des questions juridiques plus complexes ou de cas soulevant des questions nouvelles.

Comme il est indiqué plus haut, le Tribunal est saisi d'un nombre croissant de mandes supposant la tenue d'audiences à l'extérieur de Toronto. Il est difficile d'assurer un traitement expéditif de ces demandes. Il n'y a qu'un ou deux représentants des travailleurs dans plusieurs régions (habituellement du Bureau des conseillers des travailleurs). Il est donc impossible de régler le problème en tenant plus d'audiences à ces endroits, car les représentants ne pourraient suffire à la tâche. Il est aussi impossible de régler le problème en faisant venir les parties et leurs représentants à Toronto étant donné qu'il est difficile aux représentants de s'absenter de leur bureau pendant plusieurs jours. Il faut aussi souligner que les représentants du Bureau des conseillers des travailleurs ont une charge de travail très lourde au départ dans leur propre localité puisqu'ils s'occupent à la fois des audiences de la Commission et de celles du Tribunal.

Le Tribunal a pris certaines mesures pour que ces cas soient entendus plus rapidement en audience. Dans les cas qui s'y prêtaient, il a fait venir les parties et leurs représentants à Toronto en leur remboursant leurs dépenses. En 1989, il a aussi organisé des tournées d'audiences supplémentaires à certains endroits, et il a entendu en conférence téléphonique certains cas simples, notamment des requêtes en vertu de l'article 21. En 1990, le Tribunal continuera à chercher des moyens d'améliorer les services qu'il offre aux parties de l'extérieur de Toronto.

Cas traités en 1989

Nouveaux cas		Mois												Cas traités	
		Jan	Fév	Mars	Avr	Mai	Juin	Juil	Août	Sept	Oct	Nov	Déc		
1	130	14	16	11	10	12	14	12	14	12	14	12	14	1	1
2	130	14	16	11	10	12	14	12	14	12	14	12	14	2	2
3	130	14	16	11	10	12	14	12	14	12	14	12	14	3	3
4	130	14	16	11	10	12	14	12	14	12	14	12	14	4	4
5	130	14	16	11	10	12	14	12	14	12	14	12	14	5	5
6	130	14	16	11	10	12	14	12	14	12	14	12	14	6	6
7	130	14	16	11	10	12	14	12	14	12	14	12	14	7	7
8	130	14	16	11	10	12	14	12	14	12	14	12	14	8	8
9	130	14	16	11	10	12	14	12	14	12	14	12	14	9	9
10	130	14	16	11	10	12	14	12	14	12	14	12	14	10	10
11	130	14	16	11	10	12	14	12	14	12	14	12	14	11	11
12	130	14	16	11	10	12	14	12	14	12	14	12	14	12	12
13	130	14	16	11	10	12	14	12	14	12	14	12	14	13	13
14	130	14	16	11	10	12	14	12	14	12	14	12	14	14	14
15	130	14	16	11	10	12	14	12	14	12	14	12	14	15	15
16	130	14	16	11	10	12	14	12	14	12	14	12	14	16	16
17	130	14	16	11	10	12	14	12	14	12	14	12	14	17	17
18	130	14	16	11	10	12	14	12	14	12	14	12	14	18	18
19	130	14	16	11	10	12	14	12	14	12	14	12	14	19	19
20	130	14	16	11	10	12	14	12	14	12	14	12	14	20	20
21	130	14	16	11	10	12	14	12	14	12	14	12	14	21	21
22	130	14	16	11	10	12	14	12	14	12	14	12	14	22	22
23	130	14	16	11	10	12	14	12	14	12	14	12	14	23	23
24	130	14	16	11	10	12	14	12	14	12	14	12	14	24	24
25	130	14	16	11	10	12	14	12	14	12	14	12	14	25	25
26	130	14	16	11	10	12	14	12	14	12	14	12	14	26	26
27	130	14	16	11	10	12	14	12	14	12	14	12	14	27	27
28	130	14	16	11	10	12	14	12	14	12	14	12	14	28	28
29	130	14	16	11	10	12	14	12	14	12	14	12	14	29	29
30	130	14	16	11	10	12	14	12	14	12	14	12	14	30	30
31	130	14	16	11	10	12	14	12	14	12	14	12	14	31	31

Notes

† Les colonnes ne fournissent que le tout mensuel.

† Cette ligne ne fournit que les demandes de reconsideration et les requêtes de l'Ombudsman.

Profil des représentants Décisions communiquées en 1989

Employeurs

Type de représentation	Nombre de cas	Pourcentage
Service de l'indemnisation	18	2
Expert-conseil	88	7
Personnel de l'entreprise	186	16
Bureau des conseillers du patronat	60	5
Avocat	211	18
Autres	123	10
Sans représentant	495	42
Total:	1 181	100

Intervenants

Type de représentation	Nombre de cas	Pourcentage
Expert-conseil	102	9
Un des conseillers des	246	21
	32	3
	341	29
Autres	201	17
	58	5
	201	17
Total:	1 181	100

La réorganisation découlant de l'adoption de l'objectif de traitement complet de quatre mois a entraîné l'accumulation de dossiers en souffrance à l'étape de l'inscription des audiences. Le Service d'inscription des audiences devait inscrire 525 cas au mois de juin 1989; toutefois, ce nombre était passé à 328 à la fin de décembre 1989.

De toutes les demandes d'audiences soumises au Tribunal en 1989, environ 50 pour cent supposaient la tenue d'audiences à l'extérieur de Toronto. La période d'attente pour ces audiences est de deux à trois mois plus longue que dans le cas des audiences tenues à Toronto. En 1989, le Service d'inscription des audiences a commencé à s'attaquer à ce problème en faisant venir à Toronto les parties et leurs représentants lorsqu'ils y consentaient et à inscrire des audiences supplémentaires à certains endroits. Cependant, à la fin de 1989, les parties de l'extérieur de Toronto attendaient toujours plus longtemps que celles de Toronto pour obtenir une audience. Le Tribunal projette la formation d'autres jurys à plein temps en vue de faire face aux répercussions de la Loi 162 ce qui devrait contribuer à accélérer le traitement des cas entendus à l'extérieur de Toronto.

Le Tribunal a continué à confier les cas dont il était saisi à des jurys composés de membres à plein temps et de membres à temps partiel. En 1989, les membres à temps partiel ont participé à l'audition d'environ 30 pour cent des cas soumis au Tribunal.

Les travailleurs juridiques affectés à la préparation des cas au stade préalable à l'audience s'assurent que tous les documents nécessaires à l'audience sont disponibles et que les parties sont prêtes à procéder. Cette fonction de liaison a contribué de façon inestimable au bon déroulement du processus d'audience.

Audiences

Le calendrier des audiences du Tribunal prévoyait la tenue de 1 360 audiences en 1989. Le Tribunal a entendu 1 061 cas en audience et a examiné 102 cas en rendant des décisions écrites sans tenir d'audience. Seulement 2,3 pour cent des cas ont été ajournés au stade préalable à l'audience grâce à la stricte observation de la politique



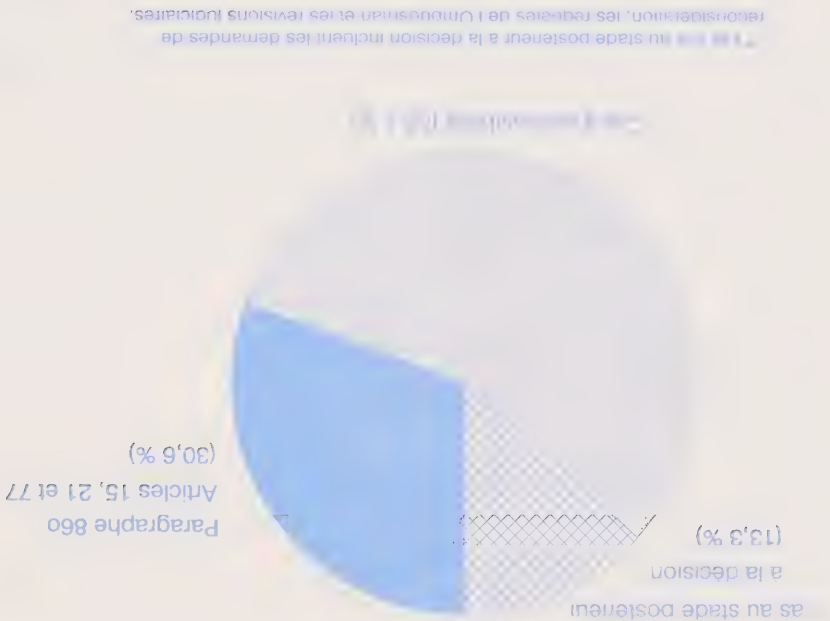
INSCRIPTIONS DES CAS DANS LE REGISTRE DES AUDIENCES

En janvier 1989, le Service d'inscription des audiences, sous la direction de l'adminis-
tratrice des appels, est passé au système d'inscription suivant:

- a) Inscription des cas aussitôt la rédaction des descriptions de cas terminée
pour assurer la préparation en vue d'une audience à une date déterminée,
même dans les cas exigeant des travaux préparatoires plus poussés.
- b) Inscription des cas selon un système de consentement modifié de sorte qu'ils
soient inscrits dans un délai prescrit en vue d'une audience à une date con-
venant aux parties. Lorsque les parties ne peuvent s'entendre sur une date,
les cas sont inscrits à une date convenant à l'appelant.

L'intégration du SRND au BCJT vise à uniformiser et à accélérer le traitement de tous les cas dont le Tribunal est saisi. Les cas relevant de dispositions particulières de la Loi sont maintenant traités en suivant les mêmes modalités que celles s'appliquant aux autres cas. Ces modalités comprennent la préparation d'une description de cas par des rédacteurs affectés exclusivement à cette tâche et l'exécution de travaux préparatoires en vue de l'audience par des travailleurs juridiques. L'intégration du SRND au BCJT était en bonne voie de réalisation à la fin de 1989.

Demandes reçues en 1989 - par catégorie -



77,3 % des demandes de révision ont été traitées en 1989. Les demandes de révision ont été traitées en 1989. Les demandes de révision ont été traitées en 1989.

TRAITEMENT AU STADE PRÉALABLE À L'AUDIENCE

Bureau des conseillers juridiques du Tribunal

La rationalisation des procédures du Tribunal et l'adoption de l'objectif de traitement complet de quatre mois en 1989 ont entraîné la restructuration du Bureau des conseillers juridiques du Tribunal (BCJT), soit notamment en y intégrant le Service de réception des nouveaux dossiers (SRND). Les avocats du BCJT contrôlent maintenant le traitement des cas portant sur des dispositions particulières de la Loi et continueront à le faire jusqu'au terme du processus d'intégration.

Pour atteindre l'objectif de traitement de quatre mois, il faut que toutes les descriptions de cas soient préparées dans un délai prescrit en suivant un modèle préétabli. La phase de mise en oeuvre et de changement organisationnel était assez avancée à la fin de 1989.

Les avocats continuent à revoir les cas les plus complexes pour vérifier s'il est nécessaire d'effectuer des recherches juridiques plus poussées ou d'obtenir des renseignements factuels ou des preuves médicales supplémentaires. L'agent de liaison médicale a reçu environ 300 descriptions de cas en 1989 afin d'aider les conseillers à déterminer s'il fallait obtenir des renseignements médicaux supplémentaires et, lorsque c'était le cas, s'ils pouvaient être obtenus du médecin traitant ou d'un des assessseurs médicaux nommés en vertu du paragraphe 86h de la Loi.

Le lecteur trouvera à l'annexe B une liste des vice-présidents, des membres, du personnel cadre et des conseillers médicaux en fonction en 1989, un compte rendu des changements apportés aux listes d'assesseurs ainsi qu'un bref résumé du curriculum vitae des vice-présidents et des membres nommés récemment.

PROCÉDURE D'APPEL

RECEPTION DES APPELS ET TRAITEMENT DES NOUVEAUX DOSSIERS

Service des dossiers

Le Service des dossiers se compose de la salle du courrier et du centre de reprographie. Il s'agit d'un service de soutien administratif qui contribue au fonctionnement du Tribunal.

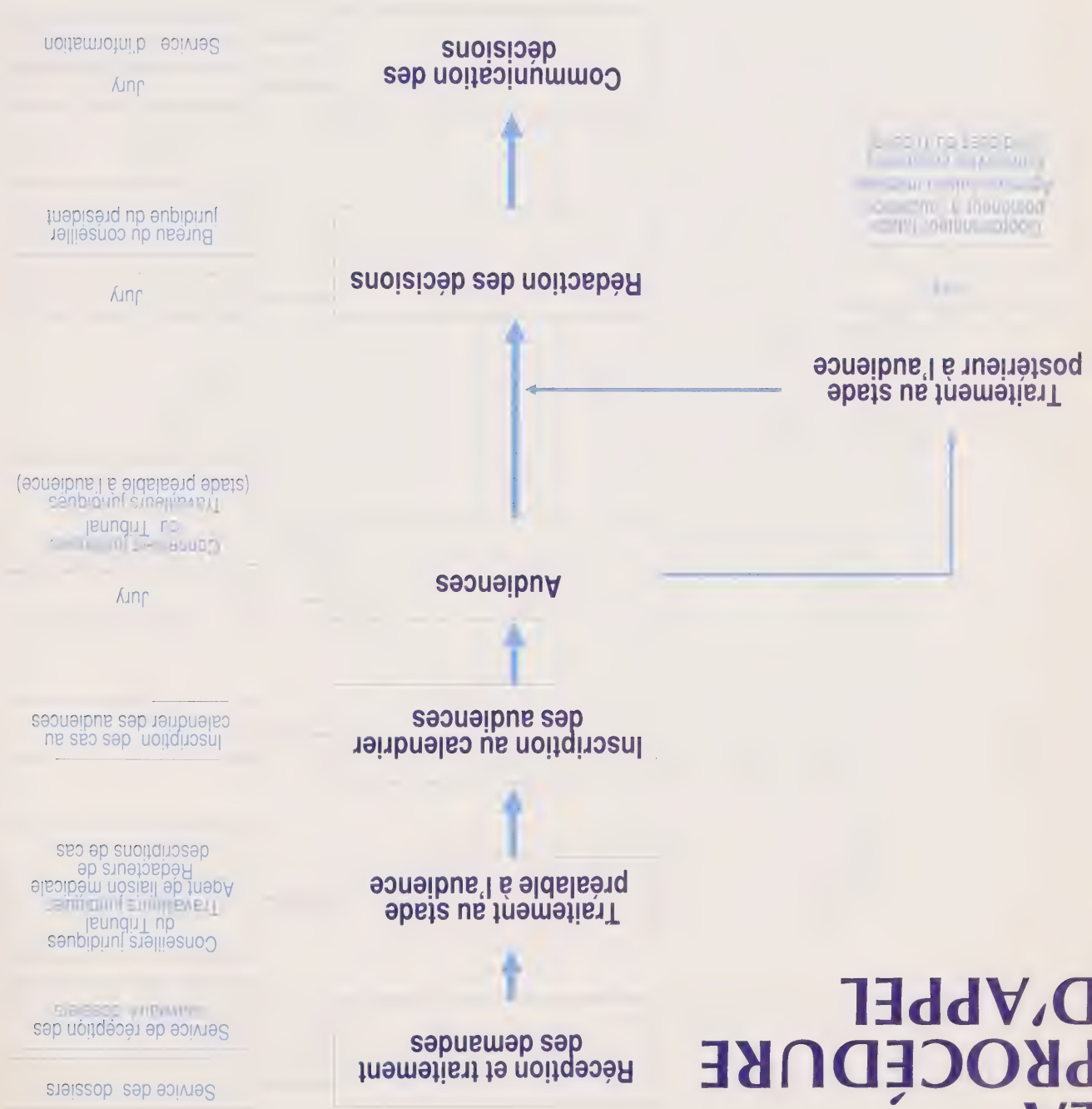
En 1989, le Tribunal a procédé à l'examen de son système de classement des dossiers pour déterminer s'il respectait les exigences prescrites par la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. Cet examen a donné lieu à des recommandations portant notamment sur l'information du système de gestion des dossiers, sur le renforcement des mesures visant à assurer la protection des renseignements personnels et sur la conservation des renseignements sur microfilm. Le Tribunal étudie présentement ces recommandations.

Bureau des conseillers juridiques et Service de réception des nouveaux dossiers

Le Tribunal a commencé à apporter des changements importants à son organisation en vue d'intégrer le Service de réception des nouveaux dossiers (SRND) au Bureau des conseillers juridiques du Tribunal (BCJT).

En plus de recevoir toutes les demandes d'appel et les questions du public concernant les appels et la procédure d'appel, le SRND est en charge de tous les cas relevant de dispositions particulières de la Loi. Parmi ces cas, mentionnons: les appels en vertu de l'article 77, visant l'accès aux dossiers des travailleurs; les requêtes en vertu de l'article 21, ayant trait aux demandes d'examen médicaux des employés; les requêtes en vertu de l'article 15, portant sur le droit d'intenter une action en dommages-intérêts. Ces cas, qui constituent environ 30 pour cent des demandes soumises au Tribunal, soulèvent fréquemment des questions juridiques complexes.

LA PROCÉDURE D'APPEL



Services spéciaux et services administratifs

- Services informatiques
- Finances et administration
- Service de traduction française
- Service d'information
- Bibliothèque et division des publications
- Service du personnel et des ressources humaines
- Centre de reprographie et salle du courrier
- Services de secrétariat
- Services de la statistique
- Traitement des données et rapports
- Centre de traitement de texte

Nous sommes d'avis que le Tribunal d'appel n'a pas commis d'erreur en concluant que les mots "en Ontario" sont sous-entendus dans l'article 15 de la Loi sur les accidents du travail. Nous sommes d'avis que le Tribunal d'appel a exposé avec soin son examen de la question, qu'il a clairement tranché la question et qu'il a rendu une décision appropriée. Nous ne pouvons pas ajouter grand chose à cette décision.

[Traduction]

La décision n° 698L (17 février 1987) (Ont. W.C.A.T.) a aussi fait l'objet d'une demande de révision judiciaire. La Cour divisionnaire a entendu cette demande le 13 janvier 1989 et l'a rejetée en déclarant ce qui suit:

Nous ne croyons pas que le Tribunal soit contraint d'accorder l'autorisation d'interjeter appel simplement parce qu'il aurait pu rendre une décision différente. Cela ne signifie pas nécessairement qu'il existe de bonnes raisons de mettre en doute l'exactitude de la décision.

[Traduction]

Quatre autres demandes de révision judiciaire ont été déposées et retirées par leur auteur. Elles visaient les décisions n° 510/87 (3 avril 1989) (Ont. W.C.A.T.), n° 60/88 (18 mars 1988) (Ont. W.C.A.T.), n° 198/88 (29 avril 1988) (Ont. W.C.A.T.) et n° 199/88 (29 avril 1988) (Ont. W.C.A.T.).

En plus des demandes de révision judiciaire énumérées ci-dessus, le Tribunal d'appel a aussi été mêlé à une demande visant la décision n° 696/88 (1989), 10 W.C.A.T.R. 308, qui avait été déposée devant la Cour suprême de l'Ontario en vertu de la règle n° 14 des Règles de procédure civile [En l'affaire: Société canadienne des postes et Syndicat des postiers du Canada et al.; Tribunal d'appel des accidents du travail, intervenant (1989), 70 O.R. (2d) 394].

Dans plusieurs décisions rendues en 1989, le Tribunal a examiné sous différents angles les questions relatives au lien avec l'emploi. Ces questions sont encore loin d'être résolues.

La notion de lésion corporelle causée par un accident survenu au cours et du fait de l'emploi a continué à être particulièrement problématique en 1989 dans les cas où des circonstances exceptionnelles, telles que la bagarre ou l'abus de drogues, entouraient l'accident.

AUTRES

Le Tribunal a été appelé à se prononcer sur plusieurs autres questions allant de l'admissibilité à des indemnités dans des cas de crises cardiaques survenues au cours de l'emploi [décisions n° 10/88 (1989), 10 W.C.A.T.R. 138, n° 11/89 (7 mars 1989) (Ont. W.C.A.T.) et n° 42/89] à la distinction entre exploitants indépendants et travailleurs [décisions n° 860/88 (20 juin 1989) (Ont. W.C.A.T.) et n° 813/89 (1989), 12 W.C.A.T.R. 269] et à la non application de la disposition de la Loi prévoyant la suppression du droit d'intenter une action en justice dans le cas d'un accident ayant trop peu de lien avec l'emploi [décision n° 701/88 (1989), 11 W.C.A.T.R. 150].

Pendant la période visée par ce rapport, le Tribunal a également examiné plusieurs cas soulevant des questions présentant un intérêt particulier pour les employeurs. À ce sujet, le lecteur peut se reporter aux décisions n° 845/88 (1989), 11 W.C.A.T.R. 154, n° 94/89 (1989), 11 W.C.A.T.R. 260, et n° 563/87 (6 janvier 1989) (Ont. W.C.A.T.), qui traitent des cotisations de démerite, et aux décisions n° 131/87 (1989), 10 W.C.A.T.R. 51, et n° 234/89 (1989), 12 W.C.A.T.R. 181, qui portent sur la classification des employeurs.

Enfin, le Tribunal a été amené à examiner l'unicité de son rôle en tant que tribunal investi de la compétence de mener des enquêtes, et il a eu l'occasion de parfaire ses méthodes et procédures. À titre d'exemples, mentionnons: la décision n° 40/87 (1989), 10 W.C.A.T.R. 33, qui traite des limites devant s'appliquer au contre-interrogatoire lors du témoignage de travailleurs souffrant de problèmes de santé; la décision n° 1248/87R (1989), 11 W.C.A.T.R. 103, qui porte sur la fonction et la légitimité de la règle de trois semaines observée par le Tribunal en matière de divulgation de documents; les décisions n° 355/88 (1989), 10 W.C.A.T.R. 194 et n° 580/87 (28 décembre 1988) (Ont. W.C.A.T.), dans lesquelles le Tribunal a examiné si la doctrine de préclusion s'applique aux instances relevant de sa compétence. En ce qui concerne la question du rappel du trop-perçu, le Tribunal a examiné si ses obligations à l'égard du fond du droit et de l'équité l'autorisent à évoquer la doctrine de la confiance préjudiciable de l'innocent. Se reporter à la décision n° 182.

LES RÉVISIONS JUDICIAIRES

En 1989, le Tribunal a été notifié de demandes de révisions judiciaires visant les décisions n° 799/87 (3 septembre 1987) (Ont. W.C.A.T.) et n° 462/88 (23 novembre 1988) (Ont. W.C.A.T.). Ces deux décisions portaient sur des requêtes en vertu de l'article 15 de la Loi. Dans la décision n° 799/87, le Tribunal est parvenu à la conclusion que la Loi supprimait le droit du travailleur d'intenter une action. La demande de révision judiciaire visant cette décision est encore en suspens. Dans la décision n° 462/88, le Tribunal est parvenu à la conclusion qu'il n'avait pas la compétence requise pour déterminer si la Loi supprimait le droit d'intenter une action en Pennsylvanie. La Cour divisionnaire a entendu ce cas le 7 février 1990 et a rejeté la demande en déclarant ce qui suit:

Le président a confié le rapport de l'Ombudsman à un jury en lui demandant de déterminer:

- a) si le dépôt d'un rapport par l'Ombudsman constituait un motif suffisant pour que le Tribunal juge bon de revenir sur une décision en vue de la reconsidérer;

- b) dans la négative, si le contenu du rapport justifiait de revenir sur la décision concernée et de la reconsidérer pour déterminer si elle devait être modifiée de quelque manière que ce soit.

S'il répondait affirmativement à l'une ou l'autre de ces questions, ce même jury devait ensuite reconsidérer la décision en question.

Le Tribunal a invité le bureau de l'Ombudsman à participer aux audiences tenues pour examiner ces questions mais il a décliné l'invitation parce qu'il ne se considérait pas comme une partie dans la procédure du Tribunal. Le travailleur à l'origine de la plainte que l'Ombudsman avait accueillie en partie était représenté à l'audience par son représentant personnel, et non par l'Ombudsman.

Dans la *décision n° 95R* (1989), 11 W.C.A.T.R. 1, le jury est parvenu à la conclusion que le Tribunal doit appliquer ses modalités de reconsidération en deux étapes lorsqu'il répond à un rapport de l'Ombudsman. Il a l'obligation d'évaluer la question du test-seuil pour déterminer si une décision doit être reconsidérée, et il ne peut déléguer cette tâche, même à l'Ombudsman. Le Tribunal doit aussi inviter les parties à participer à une audience en bonne et due forme au cours de laquelle les questions du test-seuil et de la reconsidération sont examinées. Puisque l'Ombudsman est une entité impartiale, même la partie à l'origine d'une plainte peut présenter des arguments supplémentaires sur ces questions, ce qui a été le cas dans la *décision n° 95R*.

Le jury auteur de la *décision n° 95R* a aussi analysé les normes de révision du Tribunal par rapport à celles de l'Ombudsman, tout en examinant leurs intérêts respectifs. En plus de tenir compte du cas visé par un rapport de l'Ombudsman, le Tribunal doit prendre en considération le fait qu'il doit servir l'intérêt de la justice dans l'ensemble des cas dont il est saisi. Par conséquent, le Tribunal doit respecter des normes élevées en ce qui concerne la reconsidération de ses décisions.

Le jury a conclu qu'il ne convenait pas de revenir sur la *décision n° 95* puisque, même en les prenant au pied de la lettre, les faits et les arguments présentés par l'Ombudsman et les parties n'identifiaient pas un vice de forme pouvant être assez sérieux pour justifier une reconsidération.

LES LÉSIONS PROFESSIONNELLES ET L'ADMISIBILITÉ A L'INDEMNISATION

Comme je l'indiquais précédemment, le Tribunal a eu l'occasion pour la première fois de se prononcer sur les conclusions auxquelles le Conseil d'administration de la Commission était parvenu au terme d'une révision en vertu du paragraphe 86n. Dans la *décision n° 42/89*, il a en effet exprimé son désaccord avec le point de vue exprimé par le Conseil au sujet de la définition du terme "accident" et de l'applicabilité de la clause de présomption prévue au paragraphe 3(3) de la Loi. Le cas en question a aussi fourni au Tribunal une occasion de tenter de concilier plusieurs de ses décisions qui semblaient donner des interprétations conflictuelles de la clause de présomption et, en particulier, de la norme de preuve pour réfuter la présomption de lien avec l'emploi lorsqu'elle existait. Cette décision porte sur l'épineux problème de l'approche à adopter à l'égard du droit à l'indemnisation dans le cas d'un travailleur trouvé sans vie, seul sur des lieux de travail isolés, lorsque la cause du décès est inconnue.

qu'il ne perd pas la compétence lui permettant de considérer l'invalidité comme un tout même s'il renvoie une demande pour douleur chronique à la Commission en vertu de sa *Directive de procédure* n° 9 (1987), 7 W.C.A.T.R. 444. Le fait que la Commission ait élaboré une nouvelle politique pouvant toucher à la question n'a pas d'effet rétroactif qui supprimerait la compétence du Tribunal.

Le Tribunal n'est pas contraint de renvoyer un cas à la Commission lorsqu'il découvre au moment de l'appel qu'il peut soulever des questions relatives aux troubles de la douleur chronique. Cependant, le Tribunal peut, au moment de déterminer les questions en litige faisant l'objet de l'appel, conclure qu'il convient de renvoyer le cas afin que la Commission soit la première à examiner la question de la douleur chronique. Se reporter, par exemple, à la *décision* n° 501/89 (27 novembre 1989) (Ont. W.C.A.T.).

La *décision* n° 915 a soulevé la notion de "confiance particulière". Dans la *décision* n° 182 (1988), 10 W.C.A.T.R. 1, le jury a examiné les principes qui découlent de cette notion et sa légitimité. Dans la *décision* n° 915, le jury a estimé normal que le demandeur doive inspirer une confiance particulière aux preneurs de décisions dans les cas de douleur chronique étant donné que l'évaluation de la légitimité de la demande en question repose sur ses dires. La majorité du jury auteur de la *décision* n° 182 a refusé d'accorder l'admissibilité pour douleur chronique parce qu'elle ne ressentait pas cette confiance particulière après avoir examiné la preuve qui lui avait été soumise. Le membre dissident a cependant critiqué cette notion.

Le *Troisième rapport* faisait état du fait que la Commission avait décidé de ne pas inclure la *décision* n° 18 (1987), 4 W.C.A.T.R. 21, dans sa révision 86 des cas de douleur chronique. Dans cette décision, le Tribunal reconnaît la fibromyalgie comme étant un état pathologique organique pouvant découler d'un accident de travail. Plutôt que de réviser cette décision, la Commission avait demandé à son personnel de procéder à un examen de sa politique sur la fibromyalgie. Vu les similitudes entre le diagnostic de la fibromyalgie et celui de la douleur chronique, le personnel de la Commission a recommandé, et le Conseil d'administration a accepté, d'inclure la fibromyalgie sous le régime de sa politique sur les troubles de la douleur chronique et de sa directive voulant qu'aucune indemnité ne soit versée pour la période antérieure au 3 juillet 1987.

Dans la *décision* n° 669/87F (1989), 11 W.C.A.T.R. 54, le Tribunal a conclu, après avoir examiné une quantité considérable d'éléments de preuve médicale, que les indices et les symptômes sont assez constants et présentent assez d'évidence clinique pour reconnaître la fibromyalgie en tant que syndrome. Le Tribunal a décidé qu'il ne lui incombat pas de déterminer si la politique de la Commission sur les troubles de la douleur chronique convenait aux cas de fibromyalgie mais que, d'une manière ou d'une autre, la disposition restreignant la période de rétroactivité ne s'appliquait pas à de tels cas. Contrairement à ce qu'elle faisait dans les cas de douleur chronique, la Commission avait accordé par le passé des indemnités en fonction du fond de cas particuliers. C'était des problèmes relatifs à la preuve, plutôt que des questions de principe, qui avaient empêché l'indemnisation dans certains cas de fibromyalgie. Subséquemment, le Conseil d'administration de la Commission a adopté le raisonnement formulé dans la *décision* n° 669/87F du Tribunal et a rendu les indemnités pour fibromyalgie intégralement rétroactives.

LES RELATIONS ENTRE LE TRIBUNAL ET L'OMBUDSMAN

Le *Troisième rapport* indiquait que le Tribunal avait reçu le premier rapport de l'Ombudsman à l'appui d'une plainte portée contre une de ses décisions. L'Ombudsman y recommandait que le Tribunal reconsidère une partie de la *décision* n° 95 (1986), 2 W.C.A.T.R. 61.

l'oblige à se prononcer en se fondant sur la prépondérance des probabilités. Les décisions n° 94/87 (1989), 11 W.C.A.T.R. 20, et n° 214/89 (22 mars 1989) (Ont. W.C.A.T.) fournissent d'intéressantes analyses de la question.

Il a cependant été soutenu que les dispositions légales relatives à la présomption ne s'appliquent pas lorsque les causes d'une maladie sont tout à fait inconnues. Dans de telles circonstances, la maladie ne peut pas non plus être considérée comme une incapacité indemnisable puisqu'il est impossible de démontrer si elle est reliée au lieu de travail. Se reporter à la décision n° 328/89 (1989), 11 W.C.A.T.R. 321.

STRESS PROFESSIONNEL

Le Troisième rapport faisait état des difficultés que pose la question du droit à des indemnités pour stress professionnel et donnait un aperçu des conclusions de la majorité du jury auteur de la décision n° 918 (1988), 9 W.C.A.T.R. 48. Dans sa décision, ce jury proposait de répondre aux questions suivantes:

- a) Le travailleur avait-il été soumis à un stress professionnel indiscutablement supérieur à celui ressenti par le travailleur moyen?
- b) Si tel n'était pas le cas, existait-il des preuves manifestes et convaincantes que le stress ordinaire habituellement relié au lieu de travail avait joué un rôle prépondérant dans la lésion?

Le jury auteur de la décision n° 536/89 (6 septembre 1989) (Ont. W.C.A.T.) a mis en application le test proposé dans la décision n° 918. Il a toutefois conclu que l'état d'esprit de la travailleuse ne la rendait pas admissible à des indemnités parce qu'il ne résultait pas de troubles psychologiques mais plutôt de la colère et de la frustration causées par des problèmes dans les relations patronales-ouvrières.

La décision n° 1018/87 (1989), 10 W.C.A.T.R. 82, présente un examen détaillé de la décision n° 918. Le jury a interprété la référence au "facteur de prépondérance" comme un moyen de surmonter les problèmes inhérents au règlement des demandes relatives au stress mental graduel et non comme un moyen de créer une norme de preuve plus élevée. Dans la décision n° 1018/87, le jury s'est dit d'avis que dans le cas des demandes relatives au stress, comme dans toute autre demande, il s'agit de déterminer, selon la prépondérance des probabilités, si la preuve démontre que le travail a contribué de façon importante à l'invalidité. Le jury a appliqué cette norme et a conclu que l'invalidité n'était pas indemnisable.

TROUBLES DE LA DOULEUR CHRONIQUE ET FIBROMYALGIE

L'annexe C du Troisième rapport présentait une analyse assez détaillée de l'évolution du traitement des cas portant sur les troubles de la douleur chronique et la fibromyalgie. Comme c'était alors le cas, le Tribunal n'a toujours pas eu l'occasion d'examiner si la politique de la Commission sur les troubles de la douleur chronique respecte la Loi, et la Commission n'a pas encore terminé sa révision des décisions que le Tribunal a rendues à l'égard de certains cas de douleur chronique (révision 86n).

Par contre, le Tribunal a été appelé à examiner s'il a la compétence requise pour régler les demandes pour troubles de la douleur chronique que les agents de la Commission considèrent comme des demandes pour troubles organiques. Dans la décision n° 638/89 (1989), 12 W.C.A.T.R. 221, le jury a conclu que le Tribunal est investi d'une vaste compétence à l'égard des questions générales d'admissibilité et qu'il est préférable d'évaluer l'admissibilité en considérant l'invalidité comme un tout. Dans ce cas, le commissaire d'audience avait été saisi de la preuve relative aux troubles de la douleur chronique, et le jury devait considérer sa décision comme définitive autant à l'égard des troubles de la douleur chronique que des troubles organiques. Dans la décision n° 693/89 (1989), 12 W.C.A.T.R. 236, le Tribunal a conclu

La *décision* n° 915 (1987), 7 W.C.A.T.R. 1, ne précise pas si cette analyse s'applique également aux compléments salariaux. Cependant, dans la *décision* n° 466/89 (1989), 11 W.C.A.T.R. 369, le Tribunal a conclu que de tels compléments n'étaient pas de nature permanente et qu'ils devaient être versés à des fins de réadaptation.

Le Tribunal a examiné la question de l'admissibilité à des suppléments pour réadaptation dans divers contextes. Pour se renseigner à ce sujet, le lecteur peut se reporter à la *décision* n° 399/88 (1989), 10 W.C.A.T.R. 205, qui porte sur le cas d'une travailleuse qui s'était réinstallée dans une région au taux de chômage élevé pour vivre avec sa famille. Dans la *décision* n° 375/89 (1989), 11 W.C.A.T.R. 336, le Tribunal a fait une distinction entre le droit à des suppléments temporaires pour réadaptation professionnelle et le versement discrétionnaire de suppléments à des fins de réadaptation. Bien qu'un travailleur ne compromette pas nécessairement son admissibilité à un supplément en élaborant son propre programme de réadaptation, il ne peut exiger que la Commission lui verse des indemnités pour payer les frais engagés dans un tel programme.

DISPOSITIONS PROVISOIRES DE LA LOI (AI RELATIVES AUX SUPPLÉMENTS

Les seules dispositions de la Loi 162 qui sont entrées en vigueur en 1989 sont les dispositions provisoires relatives au versement de suppléments. Dans les *décisions* n° 729/89 (1989), 12 W.C.A.T.R. 251, et n° 916/89 (1989), 12 W.C.A.T.R. 279, le Tribunal a conclu que ces dispositions provisoires n'ont pas un effet rétroactif. Les dispositions relatives au versement de suppléments adoptées auparavant ont cessé d'avoir force de loi à compter du 26 juillet 1989, mais elles continuent à s'appliquer à l'admissibilité aux indemnités accumulées avant cette date.

BASE SALARIALE

Le Tribunal a été saisi de nombreux cas soulevant des questions relatives à la détermination de la base salariale servant au calcul des indemnités. Par exemple, il a examiné si les pourboires, les primes et les avantages sociaux (p. ex.: assurance dentaire et repas gratuits) doivent être comptés dans le calcul de la base salariale. Il a aussi examiné comment traiter les gains des travailleurs qui touchent des prestations d'assurance-chômage pendant des périodes d'arrêt de travail. Enfin, il a examiné comment traiter les suppléments versés dans le cadre des programmes de création d'emplois. Se reporter aux *décisions* n° 934/88 (1989), 11 W.C.A.T.R. 196, n° 994/881 (1989), 11 W.C.A.T.R. 210, n° 994/88 (1989), 12 W.C.A.T.R. 61, et n° 712/87 (1989), 12 W.C.A.T.R. 7.

MALADIES PROFESSIONNELLES

L'indemnisation des travailleurs atteints d'invalidités attribuables à l'exposition à des produits chimiques ou à des procédés de travail continue toujours à poser des difficultés particulières sur le plan juridique. Le Tribunal considère que de telles invalidités donnent droit à des indemnités lorsqu'elles concordent avec la définition légale de "maladies professionnelles" et ses dispositions afférentes ou avec la notion d'incapacité survenant du fait et au cours de l'emploi de la définition du terme "accident".

Les cas de maladies professionnelles sont souvent compliqués parce que la médecine ne parvient pas encore à cerner avec précision les causes de certaines maladies. Il arrive parfois qu'il soit impossible de procéder à une investigation médicale des causes parce que les conditions auxquelles la maladie est attribuée n'existent plus et ne peuvent être reproduites. Malgré le manque de théories scientifiques sûres, le Tribunal a l'obligation légale de trancher la question de l'indemnisation. Dans ces cas, la Loi

Le *Troisième rapport* donnait un aperçu de quelques-unes des questions juridiques, médicales et factuelles que le Tribunal avait été appelé à examiner en 1988. Les pages qui suivent présentent, sans ordre d'importance, les faits nouveaux relatifs à certaines de ces questions et quelques questions nouvelles examinées en 1989. Malheureusement, dans un rapport de cette taille, il n'est possible de donner qu'un aperçu de certaines questions.

EVALUATION DES PENSIONS

Les jurys du Tribunal continuent à acquiescer de l'expérience dans le difficile domaine de l'évaluation des pensions. Le Tribunal procède encore de la même manière à cet égard et fait le même usage du barème des taux.

Bien qu'il accepte souvent l'opinion des spécialistes de la Commission, le Tribunal a effectué sa propre évaluation dans nombre de cas lorsque de nouveaux éléments de preuve médicale d'importance lui avaient été soumis ou lorsque certains aspects de l'invalidité n'avaient pas été évalués par la Commission. Dans la *décision* n° 172/89 (1989), 11 W.C.A.T.R. 292, par exemple, le Tribunal a accepté le rapport d'un psychologue indiquant que d'autres tests auraient dû être administrés et a accordé au travailleur une pension pour l'affaiblissement de ses facultés cognitives, trouble que la Commission n'avait pas évalué.

Le Tribunal a conclu dans plusieurs cas qu'un barème de référence différent de celui utilisé par la Commission reflétait plus exactement la diminution de la capacité de gain du travailleur. Se reporter aux *décisions* n° 407/88 (1989), 12 W.C.A.T.R. 30, et n° 31/89 (1989), 10 W.C.A.T.R. 351.

Dans d'autres instances, le Tribunal a conclu qu'il convenait de renvoyer le cas à la Commission pour qu'elle procède à une nouvelle évaluation à la lumière des constatations auxquelles il était parvenu.

Quelques cas dont le Tribunal a été saisi l'ont amené à examiner dans quelle mesure la politique de la Commission régissant l'indemnisation des travailleurs atteints de lésions multiples (quelquefois désigné par l'expression "facteurs multiples") respecte les exigences imposées par la Loi. Se reporter aux *décisions* n° 831/88 (1989), 10 W.C.A.T.R. 334, et n° 412/88 (28 juin 1989) (Ont. W.C.A.T.). Enfin, la *décision* n° 275/891 (23 mai 1989) (Ont. W.C.A.T.) renferme d'intéressantes observations au sujet de l'évaluation des pensions dans le cas des travailleurs atteints de la maladie du doigt mort.

SUPPLÉMENTS DE PENSION

Le Tribunal continue bien sûr à considérer que la Loi permet de tenir compte des circonstances modifiant les conséquences d'une lésion sur la capacité de gain d'un travailleur particulier par le truchement des suppléments de pension et des suppléments pour travailleurs âgés, et non par le truchement des dispositions relatives aux pensions. (Cela est appelé à changer dans les cas d'invalidité permanente relevant de la Loi 162.)

Il semble à présent généralement reconnu que la Commission a au moins le pouvoir discrétionnaire, si ce n'est l'obligation, de refuser tout supplément pour réadaptation qui ne viserait pas des fins de réadaptation. Un précédent à l'effet du contraire est maintenant considéré comme une irrégularité.

Dans la *décision* n° 42/89, la majorité du jury a conclu qu'une révision 86n du Conseil d'administration de la CAT a force exécutoire sur le cas qui en fait l'objet, à condition qu'elle soit dûment autorisée par le paragraphe 86n et que la Commission n'y dé-passe pas sa compétence par manque manifeste de motifs valables. Le jury a également conclu qu'une révision 86n n'a pas force exécutoire sur les cas sub-séquents. Lors de l'examen des cas subséquents, le Tribunal doit donc, à moins d'avoir de fortes raisons de ne pas le faire, traiter avec déférence les décisions découlant des révisions 86n et en respecter les principes, mais il n'est pas lié par de telles décisions.

En ce qui concerne la conduite à adopter à l'égard des questions de fond en litige dans le cas faisant l'objet de la *décision* n° 42/89, la majorité du jury a conclu que le Tribunal avait le devoir de n'observer ni les principes énoncés dans la *décision* n° 72 ni ceux se dégageant de la révision 86n de cette décision en ce qui concerne la défini-tion du terme "accident" et son effet sur l'applicabilité de la clause de présomption. Le jury a motivé sa décision en expliquant que les principes énoncés dans la décision et dans la révision dont elle a fait l'objet étaient fondamentalement erronés et que le Tribunal devait les ignorer malgré la déférence dont il doit faire preuve à l'égard des révisions 86n.

Lors de sa réunion du 10 novembre 1989, le Conseil d'administration de la CAT a exa-miné la *décision* n° 42/89 pour déterminer s'il devait la réviser en vertu du paragraphe 86n, et les membres du Conseil ont décidé de ne pas le faire. Le Conseil a donné au personnel de la CAT la directive de mettre à exécution la *décision* n° 42/89 mais de continuer à appliquer les principes relatifs à la définition du terme "acci-dent" et à l'applicabilité de la clause de présomption énoncés dans la révision 86n de la *décision* n° 72, et ce, jusqu'à ce que le Tribunal rende de nouvelles décisions traitant de ces questions.

Les membres du Conseil ont aussi demandé au personnel de la Commission de pro-céder à un examen général des politiques de la CAT régissant l'admissibilité à des indemnités dans le cas des travailleurs qui décèdent au cours de l'emploi de causes inconnues ou incertaines — question que le Tribunal avait examinée dans la

décision n° 42/89.

Etant donné que la Commission a décidé de ne pas réviser la *décision* n° 42/89, ses agents continuent à observer les principes relatifs à la définition du terme "accident" se dégageant de la révision 86n de la *décision* n° 72, alors que le Tribunal demeure libre de se conformer à l'interprétation à laquelle il est parvenu dans la *décision* n° 42/89. Heureusement, la question en litige est telle que peu de cas subiront le contre-coup de cette divergence d'opinions; toutefois, il ne s'agit pas d'une situa-tion qui devrait s'éterniser.

Je suis personnellement d'avis que le Conseil d'administration de la CAT a raison de procéder aux fastidieuses et onéreuses révisions 86n seulement après avoir parfaite-ment cerné la nature et les dimensions d'un conflit entre la Commission et le Tribunal et avoir tenté sans succès de le résoudre ou de concilier les positions en pré-sence par d'autres moyens ou par le truchement d'autres procédures. Selon moi, en décidant de ne pas réviser la *décision* n° 42/89, le Conseil d'administration a démontré qu'il considère le paragraphe 86n comme un dernier recours.

Il convient évidemment de noter que les membres du Conseil d'administration ont ainsi négligé de saisir une occasion de déterminer qui, du Conseil d'administration de la Commission ou du Tribunal, a le dernier mot aux termes du paragraphe 86n.

La nouvelle loi prévoit des dispositions relatives au réembauchage qui investissent le Tribunal d'une toute nouvelle compétence dont un très grand nombre d'appels pourrait relever. De même, bien que les répercussions des dispositions relatives aux pensions pour pertes de gains ne soient pas manifestes pour le moment, il semble raisonnable de prévoir qu'elles accroîtront aussi considérablement la charge de travail du Tribunal. Ces dernières dispositions, qui en remplacement d'autres, auront probablement un effet à double tranchant sur la charge de travail.

Les dispositions modificatives en matière de pertes de gains, prévoyant que chaque cas d'invalidité partielle permanente devra faire l'objet de quatre décisions distinctes, entraîneront probablement une augmentation générale du nombre d'appels par cas. La première décision à laquelle je fais référence est celle relative à la détermination du montant de la somme forfaitaire pour pertes non économiques, alors que les trois autres sont les décisions relatives aux pertes de gains. Chacune de ces décisions peut être portée en appel. Qui plus est, l'enjeu de chaque appel sera plus important car, sous le régime d'un système fondé sur les pertes de gains, une proportion plus élevée d'appels pourrait porter sur des demandes de pensions intégrales. Un plus grand nombre de demandes rejetées par les commissaires d'audience de la Commission des accidents du travail (CAT) pourrait donc donner lieu à des appels.

Par ailleurs, il est manifeste que le Tribunal devra assurer un traitement particulièrement rapide des cas relevant de la Loi 162. Il devra se montrer particulièrement diligent à l'égard des cas soulevant la question du droit au réembauchage, mais aussi à l'égard des premiers appels interjetés sous le régime des dispositions relatives au système fondé sur les pertes de gains dans les cas d'invalidité partielle permanente. L'évolution harmonieuse de ce nouveau système dépendra du règlement expéditif des questions d'interprétation que soulèveront les premiers cas.

Le Tribunal a donc adopté une stratégie en prévision d'une augmentation notable de sa charge de travail. Au cours des prochains mois, il prendra les mesures nécessaires afin de pouvoir accroître son personnel de 20 pour cent dès qu'il sera saisi de la première série de cas relevant de la Loi 162. Il fonctionnera ensuite avec ce personnel jusqu'à ce que l'expérience permette d'évaluer avec précision le personnel nécessaire.

QUI A LE DERNIER MOT AUX TERMES DU PARAGRAPHE 86n

Comme il était indiqué dans le *Troisième rapport*, la question de l'étendue des pouvoirs que le paragraphe 86n de la Loi confère au Conseil d'administration de la CAT demeurerait toujours en suspens à la fin de 1988.

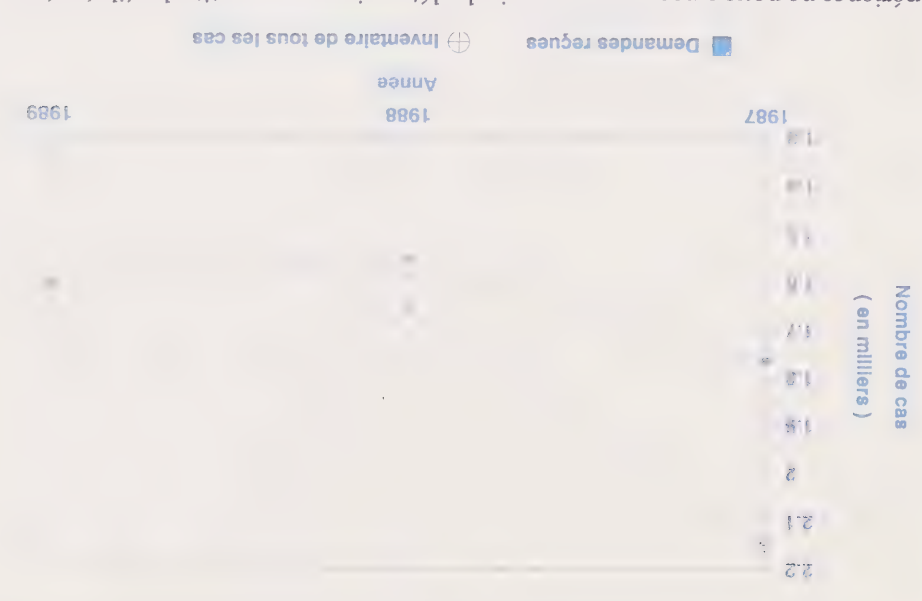
La *décision n° 42/89* (1989), 12 W.C.A.T.R. 85, est la première décision du Tribunal qui traite de cette question. Dans ce cas, le Tribunal avait à déterminer s'il devait ou non se conformer à la décision à laquelle le Conseil d'administration de la CAT était parvenu au terme de sa révision de la *décision n° 72* (1986), 2 W.C.A.T.R. 28. ("Révision 86n" s'entend ci-après des décisions rendues par la CAT en vertu du paragraphe 86n.) Les questions de principes directeurs et de droit général traitées dans la révision 86n de la *décision n° 72* portaient sur l'interprétation de la définition légale du terme "accident" et sur l'applicabilité de la clause de présomption du paragraphe 3(3). (À la fin de 1989, la révision 86n de la *décision n° 72* était la seule décision de cet ordre communiquée par la CAT.)

Le jury auteur de la *décision n° 42/89* devait déterminer quel serait l'effet d'une révision 86n sur les décisions subséquentes du Tribunal. Toutefois, alors qu'il étudiait cette question, le jury a estimé qu'il devait d'abord examiner l'effet d'une telle révision sur le cas qui en faisait l'objet.

les centres à l'extérieur de Toronto. Comme l'indique notre rapport sur l'inscription des cas au calendrier des audiences, le Tribunal continue à mettre à l'épreuve différentes stratégies afin d'améliorer le temps de traitement de ces cas.

ANALYSE DE TENDANCE

Demandes reçues c. inventaire de tous les cas



L'expérience ne nous a pas encore permis de déterminer avec certitude s'il s'avérera possible d'atteindre l'objectif de temps moyen de traitement de quatre mois avec le personnel actuel, sans toutefois nuire à la qualité du processus de prise de décisions. Nous serons mieux placés pour le faire à la fin de 1990.

Il va sans dire qu'il faut évaluer le rendement du Tribunal en matière de temps de traitement en fonction de sa charge de travail et de sa production réelles. En 1989, le Tribunal a été saisi de 1 600 appels et requêtes diverses. Il a réglé 2 000 appels et requêtes diverses et communiqué 1 125 décisions écrites motivées après avoir tenu des audiences complètes.

Je suis particulièrement heureux d'annoncer que le temps de rédaction des décisions s'est amélioré encore davantage depuis 1988. Le lecteur obtiendra des renseignements précis au sujet de l'amélioration enregistrée à cette importante étape du traitement des cas dans la partie de ce rapport consacrée à la procédure d'appel.

LA LOI 162 - SES RÉPÉRCUSSIONS SUR LE TRIBUNAL

La Loi 162, loi modifiant la *Loi sur les accidents du travail*, a reçu la sanction royale à la fin de 1989. Il faut donc tenir compte de ses répercussions pour évaluer le rendement du Tribunal et estimer son aptitude à respecter des normes de production convenables. Les observations formulées auparavant au sujet de la capacité de production du Tribunal reposent bien entendu sur la supposition qu'il disposera du personnel nécessaire pour faire face à l'alourdissement notable de la charge de travail qui en découlera probablement.

Il est impossible pour le moment d'estimer avec précision l'ampleur des répercussions que la Loi 162 aura à long terme sur la charge de travail du Tribunal. Cependant, il n'y a pratiquement aucun doute qu'elles seront de grande envergure.

Le Tribunal continue à observer les critères de rendement formulés dans l'Énoncé du mandat, des objectifs et de la prise d'engagements qu'il a adopté en 1988. Comme c'était le cas dans le *Troisième rapport*, cet énoncé est reproduit à l'annexe A du présent rapport. Je suis convaincu que, pendant toute la période visée par ce rapport, le Tribunal s'est acquitté avec succès de sa mission et qu'il a progressé à grands pas vers l'atteinte de ses objectifs, tout en demeurant fidèle à ses engagements.

L'Énoncé du mandat, des objectifs et de la prise d'engagements exprime comme suit l'objectif de production du Tribunal: "Parvenir à un temps de traitement des cas, depuis l'avis d'appel ou la demande jusqu'au règlement définitif, d'une durée moyenne de quatre mois et maximale de six mois par cas, exception faite des cas particulièrement complexes ou difficiles".

Le temps de traitement complet continue sans cesse de s'améliorer. Au cours de l'année 1989, le Tribunal a mis en oeuvre le projet de restructuration qui avait été approuvé à la fin de 1988 (décrit dans le *Troisième rapport*). Il a aussi modifié quelque peu son organisation et ses procédures en vue d'accélérer le traitement des cas au stade préalable à l'audience. Toutefois, ces efforts n'ont commencé à porter fruits qu'à la fin de l'année en raison de changements survenus au sein du personnel du Bureau des conseillers juridiques et du Service de réception des nouveaux dossiers ainsi que de modifications apportées aux formalités administratives observées par ces services.

Le Tribunal a malgré tout été en mesure de traiter quelque 200 cas d'admissibilité, de la réception de l'avis d'appel à la communication d'une décision, en respectant à peu près son objectif de quatre mois. Dans l'ensemble, le temps moyen de traitement complet s'est grandement amélioré.

Le lecteur peut obtenir une vue d'ensemble de l'amélioration du temps de traitement complet des cas en se reportant au graphique présentée à la page suivante. Ce graphique fournit le nombre total de nouveaux cas et l'inventaire de tous les cas pour chaque année à partir de 1987. Pour 1989, le graphique indique que le nombre de cas à la fin de l'année était environ 60 % inférieur à ce qu'il était à la fin de 1987. Étant donné que le nombre de nouveaux cas soumis chaque année est demeuré assez constant, cette réduction de 60 % révèle principalement l'amélioration du rendement du Tribunal.

Les cas qui doivent être entendus à l'extérieur de Toronto présentent des problèmes particuliers en ce qui concerne le temps de traitement. Il est impossible de tenir quotidiennement des audiences à l'extérieur de Toronto et, comme nous en rendons maintenant compte, les ressources en intervenants posent également des limites dans

INTRODUCTION

Le Tribunal d'appel des accidents du travail est un tribunal tripartite qui a été institué en 1985 pour entendre les appels interjetés contre les décisions de la Commission des accidents du travail. Le Tribunal est une institution judiciaire distincte, indépendante de la Commission.

Le présent rapport, qui constitue le rapport du président du Tribunal et celui du Tribunal, est publié à l'intention du ministre du Travail et des différents groupes intéressés au Tribunal. Le lecteur y trouvera une description du fonctionnement du Tribunal pendant la période visée et un examen de certaines questions pouvant présenter un intérêt particulier. Ce rapport porte sur l'année civile 1989.

Il s'agit du premier rapport annuel intitulé "Rapport annuel". Les trois rapports précédents, expressément intitulés "Premier rapport", "Deuxième rapport" et "Troisième rapport", relatent les faits saillants de l'institution, de la formation et du rodage du Tribunal. Ces rapports portent respectivement sur les périodes allant du 1^{er} octobre 1985 au 30 septembre 1986, du 1^{er} octobre 1986 au 30 septembre 1987 et sur la période de quinze mois allant du 1^{er} octobre 1987 au 31 décembre 1988.

Ce rapport annuel renferme en fait le rapport du président et celui du Tribunal. Dans son rapport, le président formule ses observations, ses vues et ses opinions personnelles. Le rapport du Tribunal, lui, donne un aperçu des activités et des affaires financières du Tribunal ainsi que des faits nouveaux relatifs à ses formalités administratives et à ses procédures.

ANNEXES

ANNEXE A

ÉNONCÉ DU MANDAT, DES OBJECTIFS ET DE LA PRISE D'ENGAGEMENTS

26

ANNEXE B

VICE-PRÉSIDENTS ET MEMBRES EN FONCTION EN 1989

33

TABLEAUX ET GRAPHIQUES

ANALYSE DE TENDANCE – DEMANDES REÇUES C. INVENTAIRE DE TOUS LES CAS

3

LA PROCÉDURE D'APPEL

14

DEMANDES REÇUES EN 1989 – PAR CATÉGORIE

16

DEMANDES REÇUES EN 1989 – PAR CATÉGORIE

17

PROFIL DES REPRÉSENTANTS – DÉCISIONS COMMUNIQUÉES EN 1989

18

CAS TRAITÉS EN 1989

19

STATISTIQUES COMPARATIVES SUR LA CHARGE DE TRAVAIL

20

ÉTAT DES DÉPENSES AU 31 DÉCEMBRE 1989

24

TABLE DES MATIÈRES

1	INTRODUCTION
2	LE RAPPORT DU PRÉSIDENT
2	ÉVALUATION DU RENDEMENT DU TRIBUNAL PAR LE PRÉSIDENT
3	LA LOI 162 - SES RÉPÉRCUSSIONS SUR LE TRIBUNAL
4	QU'À LE DERNIER MOT AUX TERMES DU PARAGRAPHE 86n
6	QUESTIONS DE FOND TRAITÉES EN 1989
6	Évaluation des pensions
6	Suppléments de pension
7	Dispositions provisoires de la Loi 162 relatives aux suppléments
7	Base salariale
7	Maladies professionnelles
8	Stress professionnel
8	Troubles de la douleur chronique et fibroïmyalgie
9	Les relations entre le Tribunal et l'Ombudsman
10	Les lésions professionnelles et l'admissibilité à l'indemnisation
11	Autres
11	LES RÉVISIONS JUDICIAIRES
15	LE RAPPORT DU TRIBUNAL
15	VICE-PRÉSIDENTS, MEMBRES ET PERSONNEL CADRE
15	LA PROCÉDURE D'APPEL
15	Réception des appels et traitement des nouveaux dossiers
16	Traitement au stade préalable à l'audience
17	Inscription des cas au calendrier des audiences
18	Audiences
21	Traitement des cas au stade postérieur à l'audience
21	Rédaction des décisions
21	Communication des décisions
22	SERVICE D'INFORMATION
22	Bibliothèque
22	Publications
23	ÉQUITÉ SALARIALE
23	QUESTIONS FINANCIÈRES

RAPPORT ANNUEL

1989

100, avenue University, 7^e étage

Toronto (Ontario) M5G 1X4

Tél.: (416) 598-4638 TÉLÉCOPIEUR: (416) 965-51 18

ISBN: 0833-5451

© TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL (Ontario) 1990

Rapport annuel 1989

**Tribunal d'appel
des accidents du travail**
**Workers' Compensation
Appeals Tribunal**



Workers' Compensation
Appeals Tribunal



Tribunal d'appel
des accidents du travail

CA204
L95
-R28



**Annual
Report
1990**

ANNUAL REPORT 1990



Ontario Workers' Compensation Appeals Tribunal
505 University Avenue
7th Floor
Toronto, Ontario
M5G 1X4

ISSN: 1181-6031

© 1991

Contents

INTRODUCTION	v
--------------	---

REPORT OF THE TRIBUNAL CHAIR

THE TRIBUNAL'S PERFORMANCE: CHAIR'S ASSESSMENT	1
THE COOPERS & LYBRAND REVIEW	5
THE TRIBUNAL'S REVISED SENIOR MANAGEMENT STRUCTURE	6
INFORMATION TECHNOLOGY	7
CHANGES IN THE DRAFT-DECISION REVIEW PROCESS	7
MEDICAL MATTERS	8
BILL 162 AMENDMENTS: UPDATE ON TRIBUNAL INVOLVEMENT	9
SECTION 86n AND THE FINAL SAY ISSUE: UPDATE	9
HIGHLIGHTS OF THE 1990 CASE ISSUES	10
The Compensable, Work-injury Relationship	10
Occupational Disease	10
Occupational Stress	11
Chronic Pain and Fibromyalgia	12
Pension Assessments	14
Worker versus Independent Operator	15
Transfer of Costs Between Employers	15
Experience Rating	15
Penalty Assessments	16
Canadian Charter of Rights	16
Other	17
JUDICIAL REVIEW ACTIVITY	17

THE TRIBUNAL REPORT

THE APPEAL PROCESS	19
VICE-CHAIRS, MEMBERS AND STAFF	19
TRIBUNAL COUNSEL OFFICE	19
Intake	19
Case Description Writers	19
Pre-hearing Legal Workers	20
Lawyers	20
Medical Liaison Office	20
Post-hearing Legal Workers	21

INFORMATION DEPARTMENT	22
Publications	22
Library Highlights	22
SYSTEMS DEPARTMENT	23
FRENCH LANGUAGE SERVICES	23
YEAR END STATISTICAL SUMMARY	24
Introduction	24
Overview	24
Incoming Cases and Cases Closed	24
1990 Production Measures	28
Representation at Hearings	31
Cases in Inventory	32
FINANCIAL MATTERS	33

APPENDIX A

VICE-CHAIRS AND MEMBERS ACTIVE IN 1990	37
VICE-CHAIRS AND MEMBERS — RE-APPOINTMENTS	39
VICE-CHAIRS AND MEMBERS — EXPIRED APPOINTMENTS AND RESIGNATIONS	40
NEW APPOINTMENTS DURING 1990	40
SENIOR STAFF	42
MEDICAL COUNSELLORS	42

APPENDIX B, C, D — Audit Reports

Appendix B	43
Appendix C	47
Appendix D	51

INTRODUCTION

The Workers' Compensation Appeals Tribunal is a tripartite tribunal established in 1985 to hear appeals from the decisions of the Ontario Workers' Compensation Board. It is a separate and self-contained adjudicative institution, independent of the Board.

This report is the Tribunal Chair's and the Tribunal's annual report to the Minister of Labour and to the Tribunal's various constituencies. It describes the Tribunal's operational experience during the reporting period and covers particular matters which seem likely to be of special interest or concern to the Minister or to one or more of the Tribunal's constituencies. The reporting period for this report is the 1990 calendar year.

This is the second annual report to be titled "Annual Report" and to cover a calendar year. The first three annual reports, distinctively titled because of their special role in recording the Tribunal's formative years, were the "First Report", the "Second Report" and the "Third Report". They cover respectively the periods of October 1, 1985, to September 30, 1986; October 1, 1986, to September 30, 1987; and the fifteen-month period from October 1, 1987, to December 31, 1988.

This Annual Report comprises, in effect, two reports: The Report of the Tribunal Chair and The Tribunal Report. The Report of the Tribunal Chair reflects the personal observations, views and opinions of the Chair. The Tribunal Report covers the Tribunal's activities and financial affairs, and developments in its administrative policy and process.

REPORT OF THE TRIBUNAL CHAIR

THE TRIBUNAL'S PERFORMANCE: CHAIR'S ASSESSMENT

In 1990, the Tribunal continued to meet its responsibilities in hearing and deciding appeals from WCB decisions. It dealt with both worker and employer interests fairly and objectively in accordance with the rule of law, and its carefully reasoned decisions once more played a constructive role in the compensation system's policy development process. Progress in the improvement of the Tribunal's efficiency continued to be made, although not at the pace evidenced in 1989.

The goal of an average four-month turnaround time remained elusive. The average time for a typical case to make its way through the Tribunal's process from start to finish in 1990 was just under eight months.

But the Tribunal Counsel Office (TCO) staff reorganization and restructuring referred to in the 1989 report was not fully resolved until well into 1990 (our new General Counsel took office only in December 1989), and the 1990 average figures include continuing TCO operational backlogs during that period. By the middle of the year, the TCO was back in shape and by the end of the year the processing times in TCO were substantially reduced.

An indication of the latter improvement may be seen in the fact that of the 1,069 cases received by the Tribunal in the first eight months of 1990, 50 per cent (532 cases) were closed before the year was out with an average turnaround time of four months and five days. These included 156 entitlement cases which were closed with an average turnaround time of six months.

By the end of the year, workers or employers who came to the Tribunal with an uncomplicated entitlement case that was ready for a hearing, could reasonably expect to have that case heard and a decision issued within four to five months from the time the Tribunal received the file from the WCB. (In this context, a case is "uncomplicated" if it does not require any further medical investigation, presents no novel legal issues and, by reason of the worker's consent, needs no preliminary adjudication of the employer's right of access to the Board file.)

The Tribunal has a small but persistent number of backlogged cases at the decision-writing stage of the process. About 9.1 per cent of the cases at the ready-to-write stage had been ready-to-write for more than 12 months. We expect to substantially reduce that backlog over the next several months, but the Tribunal's experience over five years suggests that it is very difficult to avoid having a small percentage of decisions subject to lengthy delays. The problem has become increasingly difficult to control as the proportion of complex to simple cases continues to grow.

Statistically, this batch of ageing cases is of limited significance, but it represents hardship to the parties involved in those cases and is demoralizing to Tribunal adjudicators and staff and very tough on the Tribunal's reputation. The stubborn persistence of this problem in one form or another evidences, I have come to believe, insufficient adjudicative resources. We have, I think, been asking more of our full-time Vice-Chairs than is reasonable. This conclusion has led me to recommend two new full-time Vice-Chair positions in the 1991 budget submission.

The Tribunal's Vice-Chairs have, in my view, continued to perform in outstanding fashion. This is not to say that their colleagues, the worker and employer Members, or the Tribunal staff who make the work of the adjudicators possible, are not also performing exceptionally well. However, the Vice-Chairs have carried a special burden in the writing and analysis demands.

The Vice-Chairs are responsible for the decision-writing and for 1990 it was agreed, as it had been for 1989, that for full-time Vice-Chairs a target of 100 scheduled hearings a year was a reasonable planning assumption. Given the Tribunal's low adjournment experience, if the scheduling target is met, a full-time Vice-Chair may expect to have about 90 decisions to write each year. With the exception of the small ageing backlog to which I have already referred, these decisions continue to be accomplished in a timely fashion, under very considerable pressure.

The average writing time for the 1,081 decisions released in 1990 was 14.2 weeks. But if one removes from that calculation the 57 decisions which were released more than a year after the last hearing date, the average writing time for the remaining 1,024 cases then gives a better picture of the writing time required in the more typical cases. The average writing time with respect to the latter cases in 1990 was 10.3 weeks.

These are, in my view, acceptable release times. They are comparable to the 1988 figures but represent an increase over 1989. The 1989 average writing time for all decisions was 7.5 weeks. The increase relative to the 1989 figure suggests that the 1989 figure may have been statistically anomalous. My colleagues and I share a strong impression that, generally speaking, the pace of decision-writing in 1990 was good given the increasing levels of complexity of appeals.

In 1990, the Tribunal once more closed more cases than it received, reducing the inventory of cases at the Tribunal from 1,571 at the end of 1989, to 1,502 at the end of 1990. The inventory and its distribution as of December 31, 1990, as compared to 1989, may be seen in the accompanying chart. (See Figure 1) The net inventory reduction of 69 cases compares, however, unfavourably with the net reduction in 1989 of 400 cases. And, in fact, in 1990 the net reduction in the inventory was achieved at all only because the number of cases received in 1990 was about 100 cases lower than the corresponding figure in 1989.

Indeed, as the chart (Figure 2) on page 25 indicates on its face a down-turn in total cases closed by the Tribunal of about 28 per cent, as compared to 1989 — an apparent loss of production of about 440 cases.

However, these figures are significantly misleading as to the Tribunal's substantive performance in 1990 and it is important for the reader to understand the true picture.

FIGURE 1

COMPARATIVE CASELOAD STATISTICS

	As at December 31, 1989	As at December 31, 1990
Cases at pre-hearing stage*	1,134	1,082
Post-hearing cases		
- Recessed	65	68
- Complete but on hold	138	135
- Ready to write decision	234	217
Total cases at post-hearing stage	437	420
TOTAL CASELOAD**	1,571	1,502

* This figure includes pension-chronic pain cases which were on hold (180 cases as at December 31, 1990) and post-decision cases (156 as at December 31, 1990).

** TOTAL CASELOAD excludes preliminary cases for which the appeal type was as yet undefined (12 cases as at December 31, 1990) and cases which were completed awaiting only their formal file closing (33 cases as at December 31, 1990).

In the first place, approximately 215 of the 440 lost cases are paradoxically accounted for by an improvement in the Tribunal's efficiency at the Intake stage of its operations.

The Tribunal always has a significant number of cases in its incoming caseload which eventually turn out not to be within its jurisdiction. Typically, the problem is that some aspect of the case has not yet been finally dealt with at the WCB. These cases are ultimately withdrawn at the point where the Tribunal identifies the jurisdiction problem, and at that point they are categorized as cases closed without a hearing. Cases of this kind enter the Tribunal's incoming caseload statistics and, since they are usually dealt with relatively quickly and without a hearing, most of them are also reflected in the same year's statistics for cases closed without a hearing.

In 1990, we were able to improve our rate of identification of this type of problem at the intake stage and, through improved communications between our Intake staff and the "premature" appellants, to have a much larger proportion of this type of case withdrawn at the outset. Cases withdrawn at that point minimize the delay to the appellants, do not engage the Tribunal's adjudicative resources, do not enter its incoming caseload statistics and, of course, do not then appear in the statistics for cases closed. The reduction as between 1989 and 1990 in the number of cases in the category of cases closed without a hearing — a reduction of about 215 cases — reflects these new more efficient procedures and not any loss in actual production.

When the reduction in the total number of cases closed as between 1989 and 1990 is adjusted for this anomalous result of the improved efficiencies in the Intake Department, we are left with a substantive reduction of about 225 cases, or about 12 per cent, instead of 28 per cent, below the 1989 production figures. But this number is also misleading as to the Tribunal's actual level of performance because another 75 of the lost cases were lost to the upward trend in the average complexity of cases coming to the Tribunal.

Prior to 1990, the relationship between the number of decisions released and the number of cases closed by decision remained relatively constant: to close one case by decision the Tribunal was required to release 1.02 decisions. The relationship is not one-to-one because not all cases can be disposed of with one decision. Complex cases will often require one or more interim decisions.

In 1990, this proportion, of decisions released to cases closed by decision, jumped to 1.10. This change is reflective of the trend to more complex cases that is being evidenced in various areas of the Tribunal's activities. Had that proportion remained at the 1989 figure of 1.02, the Tribunal's decision-making efforts would have closed about 75 more cases than are shown in the chart.

In effect, the drop in the number of closed cases which, in fact, reflects a reduced level of Tribunal production in 1990, as compared to 1989, is 140 cases — a 7 per cent reduction.

The nature of the reduction in the Tribunal's level of performance may also be assessed by comparing the number of decisions released. In 1990, the Tribunal released 1,081 decisions, which compares with 1,181 decisions in 1989 — a drop of 100 decisions, or about 9 per cent.

A third development which conspired to lower the number of cases closed in 1990 was the increase in the number of hearings it took to produce a decision. In 1989, each decision required on average 1.05 hearings. In 1990, the corresponding figure was 1.08. (Additional hearings are required in a case when the case proves to be too complex to complete in the time scheduled for the original hearing.) Accordingly, a more accurate measure of the Tribunal's performance may be the number of hearings held. In 1990, the Tribunal held 1,163 hearings — 7 per cent below the 1989 number of hearings.

Whether the true measure of the production loss in 1990 is 7 per cent or 9 per cent, it is approximately equivalent to one full-time panel's annual production, and the cause is not hard to find. Through a combination of anomalous circumstances, the Tribunal experienced in 1990 a series of prolonged vacancies in its full- and part-time adjudicator positions that was, in total, the equivalent of being without approximately two full-time panels for the whole year. Retirements and maternity leaves produced an unusual number of vacancies and the filling of these was then complicated and delayed by the provincial election and the change in government and of the transition to a new appointments procedure. In my view, it is a tribute to the dedication of the staff and adjudicators that the shortfall in production was not higher.

THE COOPERS & LYBRAND REVIEW

In 1989, as part of his Green Paper study of various aspects of the workers' compensation system, the then Minister of Labour commissioned a review of the system's appeal processes, including the appeal process at the Appeals Tribunal. Coopers & Lybrand were awarded the Appeals Tribunal assignment and their study of the Tribunal was carried on during the summer and fall of 1989. They reported to the Minister of Labour and the Tribunal Chair in May 1990.

The review relied extensively on interviews of individuals who had varying degrees of experience with the Tribunal's processes and performance, both externally and inside the Tribunal.

As of the end of 1990, the Tribunal was still in the process of evaluating the Report's recommendations. In general, the Report confirmed that the Tribunal had interpreted its mandate appropriately and met that mandate successfully. The Report acknowledged a high degree of operational efficiency and effectiveness and reported general respect within both the employer and worker communities, and at the WCB, for the quality, fairness and usefulness of the Tribunal's decisions.

Notwithstanding its highly positive conclusions concerning the Tribunal's overall success in meeting its mandate, the Report went on to make numerous recommendations for changes in the Tribunal's processes and structure — often changes in the very processes and structures which, in my opinion, accounted in the first place for the success the Report acknowledged. These recommendations were not, in my respectful view, always accompanied by reasons of the quality one might have expected in such circumstances.

My immediate reaction and that of my colleagues to the Report's recommendations may be seen from the following extract from my letter to the Minister of Labour acknowledging receipt of the report in May 1990:

A number of the changes which the Report proposes we are already in the midst of accomplishing; there are other recommendations that we will have no difficulty in accepting, and some that are clearly worthy of serious consideration. I do have a concern about the currency of some of the findings and about the suggestions relating to structural changes in the Tribunal's organizational and process arrangements, and I will address those in due course.

The reference to a question concerning the "currency" of some of the findings, reflected the Tribunal's particular surprise at some of the Report's criticisms of the Tribunal's adjudicative process. These seemed to run contrary to the generally positive feedback on the Tribunal's adjudicative processes that by 1989 my colleagues and I were commonly getting from our usual contacts within the employer and worker communities. The Report left the Tribunal wondering if the study might not be reflective of views grounded in old perceptions of the Tribunal's processes.

Because of the foregoing concerns, it was felt that, before deciding on the Report's recommendations, the Tribunal ought to consult widely within the worker and employer constituencies as to current views on the issues raised by the Report. As of the end of 1990, the Tribunal Chair and Alternate Chair were just finishing a series of numerous meetings with all the major players in both the worker and employer communities throughout the province.

A comprehensive response to the Report will be filed with the Minister in 1991.

THE TRIBUNAL'S REVISED SENIOR MANAGEMENT STRUCTURE

During 1989 and into 1990, the Tribunal was experimenting with a restructuring of its senior management, and this experiment was concluded and permanent changes introduced in the latter half of the year.

The level of management represented by the position of General Manager has been eliminated and the General Manager's responsibilities distributed amongst the following three new positions:

Chief Information Officer (CIO)
Chief Administration Officer (CAO)
Manager, Financial Administration (MFA)

The CIO position combines responsibility for the Tribunal's publications and library operations with responsibility for the strategic planning, design, maintenance and operation of the Tribunal's computer systems. The position reports to the Chair's Office.

The CAO position is responsible for planning and maintenance of the Tribunal's premises; for the procurement and administration of its supplies and equipment; for management and administration of its internal administrative support services, including the purchasing function; and for strategic planning, implementation and administration of the Tribunal's Human Resources policies. The position is also responsible for ensuring generally that none of the Tribunal's administrative needs are being overlooked by reason of their slipping through the seams in the management structure created by the absence of the overarching General Manager position. The position reports to the Chair's Office.

The MFA is responsible for the management and administration of all of the Tribunal's financial activities. This position also reports to the Chair's Office.

The senior management structure is now comprised of these three new positions, plus the previously existing positions of General Counsel and Counsel to the Chair.

In addition to discharging the usual legal responsibilities of a General Counsel position, the Tribunal's General Counsel, who reports generally to the Chair, manages and supervises the Tribunal Counsel Office and the pre-hearing investigation and preparation work done by that office. The position is also responsible for supervising and administering the Tribunal's operational relationship with the WCB.

The Counsel to the Chair is responsible to the Chair for the maintenance of the general quality and consistency of the Tribunal's decisions and for the continued coherence and usefulness of the Tribunal's developing jurisprudence. She accomplishes this through the supervision and administration of the Tribunal's draft-decision review process. This position is also responsible for advising the Chair's Office concerning matters of administrative law as they affect the Tribunal's adjudicative activities, for supervising and administering the procedures connected to the exercise of the Tribunal's powers of reconsideration; and for advising the Chair in respect of his responsibilities under the *Freedom of Information and Protection of Privacy Act*.

Two other positions with senior responsibilities which report to the Chair's Office are: the Appeals Administrator and the Manager of Statistical Research and Analysis (MSRA).

The Appeals Administrator is the Tribunal's Registrar and is responsible to the Chair's Office for the scheduling, organization and administration of hearings, including travel and premises arrangements. This position also works closely with the Chair's Office in the assignment of panels. The MSRA is responsible for keeping track of the Tribunal's production performance, for keeping the Chair's Office and senior management advised regularly of that performance in all its aspects, and for the timely identification of emerging problems and new trends.

The Chair's Office as referred to above comprises the Tribunal Chair and Alternate Chair and their support staff. The Chair's Office looks after the Chief Executive Officer responsibilities of the Chair. These responsibilities are currently shared between the Chair and the Alternate Chair in the following manner: The Chair works with the Counsel to the Chair, the CIO, the MFA and the General Counsel and, in conjunction with his Executive Assistant, looks after the appointments process. The Alternate Chair works with the CAO, the Appeals Administrator and the MSRA. She also deals with the General Counsel in respect of TCO matters affecting production rates. The Alternate Chair has also accepted the responsibility for expediting the adjudicative work of the Tribunal's Vice-Chairs and Members.

In respect of policy or administrative matters of strategic significance, senior management continues to work with the Tribunal's tripartite committee structure and with the Tribunal's Executive Committee and the Tribunal Assembly. The committee structure is currently under review as a result of recommendations in the Coopers & Lybrand Report.

INFORMATION TECHNOLOGY

Following the appointment of the new CIO, the Tribunal's information management strategy has been reviewed and at the end of 1990, the Tribunal was putting the finishing touches on a new technology plan which includes the completion in 1991 of a major upgrade of the Tribunal's central computer system and the implementation of an operational case tracking system.

CHANGES IN THE DRAFT-DECISION REVIEW PROCESS

The substance of the draft review process conducted by the Office of Counsel to the Chair continued unchanged during this reporting period. As discussed in previous annual reports, the aim of the review is to ensure that Tribunal decisions are not rendered in isolation, that they meet Tribunal-wide standards of quality, and that the Tribunal's case law develops as much as possible as a coherent body of decisions. The review is performed in most cases by Counsel, with occasional input from the Chair.

Counsel and panel members are careful to ensure that the administrative law requirements outlined in *Consolidated-Bathurst Packaging Ltd. v. International Woodworkers of America, Local 2-69* (1990), 68 D.L.R. (4th) 524 (S.C.C.) are met: the hearing panel's factual findings are accepted; the parties are provided with an opportunity to make submissions on any new matter of significance identified in the draft review process which the parties have not had opportunity to address in the hearing process; and the ultimate decision is left to the panel members.

During this reporting period the procedure of reviewing all drafts prepared by part-time Vice-Chairs was discontinued. Many of the Tribunal's part-time Vice-Chairs now have significant experience in adjudicating workers' compensation matters and no longer require assistance on a regular basis. It was felt to be more sensible to implement a review system that reflected the Panel Chair's experience in workers' compensation and decision-writing.

A new Vice-Chair, whether full- or part-time, with significant prior experience in workers' compensation, is now asked to submit for review his or her first 10 drafts dealing with entitlement appeals and first five drafts in special section cases. A new Vice-Chair without significant workers' compensation background is asked to submit his or her first 25 entitlement drafts and first 10 special section drafts for review.

After this initial phase is completed, neither full- nor part-time Vice-Chairs are asked to submit drafts to the review process except when they identify issues of general Tribunal interest or significance.

MEDICAL MATTERS

The Tribunal continued in 1990 to attract leading specialists to its roster of section 86h medical assessors and to receive from that roster, medical evidence of very high quality.

It also continued to receive invaluable advice and assistance from its group of senior Medical Counsellors.

The internal, post-decision, Medical Counsellor audit of the Tribunal's general handling of medical issues and treatment of medical evidence continues to affirm that the Tribunal's performance in respect of these matters remains, from an overall perspective, competent and appropriate.

The Tribunal's relationship with the medical community generally is a matter which I have always regarded as a particularly high Tribunal priority. Ultimately, the quality of the Tribunal's decisions on medical issues is dependent on that relationship. I am pleased to report that, as evidenced by the Tribunal's continuing ability to readily enlist leading members of the profession to its service, that relationship remains a positive one.

BILL 162 AMENDMENTS: UPDATE ON TRIBUNAL INVOLVEMENT

The Tribunal continued to be surprised by the slow development of any incoming caseload stemming from the Bill 162 amendments to the Act. As of the end of the reporting period, apart from some transitional questions affecting cases already before the Tribunal, the Tribunal had received only one Bill 162 case — a re-employment case.

SECTION 86n AND THE FINAL SAY ISSUE: UPDATE

In 1990, the WCB Board of Directors released its decision in the second of the two 86n reviews that it has undertaken. This one reviewed the Tribunal's *Decision Nos. 915* (1987), 7 W.C.A.T.R. 1, and *915A* (1988), 7 W.C.A.T.R. 269, and a number of associated decisions on the issue of the retroactive application of the new policy for compensating chronic pain conditions. I refer here to the Board's decision as *Review Decision 915 and 915A*.

Decision No. 915 found that disabling chronic pain was compensable and overruled the Board's previous approach to chronic pain. *Decision No. 915A* concluded that the appropriate commencement date for chronic pain benefits awarded in accordance with this overruling was March 27, 1986 — the date on which the Tribunal's review of the chronic pain policy had commenced.

Review Decision 915 and 915A (1990), 15 W.C.A.T.R. 245, concluded that there was no reason in the circumstances of the introduction of the chronic pain policy not to accept the Tribunal's commencement date for the new policy. There was thus no need to refer either *Decision No. 915* or *915A* back to the Appeals Tribunal for reconsideration.

With respect to the cases in which the Appeals Tribunal had awarded temporary benefits for chronic-pain conditions for periods prior to March 27, 1986 (which cases were a part of the same review process), the Board of Directors determined that in logic the same retroactive date should apply. The Board invited the parties to those cases to make submissions on the issue of whether the Board of Directors should now proceed to exercise its right under section 86n to direct the Tribunal to reconsider those decisions in light of that determination.

As of the end of the reporting period, decisions on the latter cases were still pending. Accordingly, as of the end of 1990, the Board of Directors had yet to issue a section 86n directive to the Tribunal. It may be noted that in *Review Decision 915 and 915A* the Board of Directors agreed with the interpretation in *Decision No. 42/89* (1989), 12 W.C.A.T.R. 85, as to the obligations of the Tribunal in the face of a section 86n direction (see the 1989 Annual Report).

Additional details on the Board's review decision appear in the chronic pain section of the highlights of case issues below.

HIGHLIGHTS OF THE 1990 CASE ISSUES

The 1989 Annual Report and Third Report provided examples of some of the legal, factual and medical issues addressed by the Tribunal during the reporting period. This section continues that tradition, by updating some of the issues previously canvassed and noting new ones. Unfortunately, it is impossible to do more than highlight a few areas that seem to be of particular interest. The issues are presented in no particular order of importance. The section includes a number of issues of particular interest to employers.

The Compensable, Work-injury Relationship

The 1989 Report noted that the concept of an injury by accident “arising out of and in the course of employment” — which is fundamental to the workers’ compensation system — continued to be explored and developed in the context of difficult fact situations, such as fights, heart attacks, unexplained falls, drug abuse and the like.

This trend continued in 1990, along with a renewed interest in the role of the presumption clause. See *Decision No. 24F*(1990), 13 W.C.A.T.R. 1, *Decision No. 405/90* (1990), 16 W.C.A.T.R. 244, *Decision No. 351/90* (1990), 17 W.C.A.T.R. 143, and *Decision No. 224/90*(1990), 14 W.C.A.T.R. 310.

Occupational Disease

Occupational disease cases, involving disabilities caused by exposure to harmful substances or processes at work, continued to pose some of the most challenging issues for the Tribunal. The general approach to these cases remains the same: disabilities are compensable if they fall within the statutory definition of “industrial disease” and related provisions, or within the “disablement” branch of the definition of “accident”.

The Board has frequently developed policies to assist in adjudicating claims for particular industrial diseases where epidemiological evidence exists. *Decision No. 257/89* (1990), 14 W.C.A.T.R. 87, provides an interesting illustration of the Tribunal’s role in reviewing such policies. It involved the policy adopted for compensating gold miners who develop lung cancer. The Panel reviewed the policy in detail and the epidemiological evidence on which it was based. The Panel found that even though the worker did not fit precisely within the policy, the evidence of his actual dust exposure was comparable to the levels for which compensation was granted under the policy, and he was entitled to benefits. The Board’s policy could not fetter the Tribunal’s discretion to consider individual cases on their merits.

The Tribunal may also be called on to adjudicate occupational disease claims where there is little or no epidemiological evidence. See, for example, *Decision No. 1268/87*(1990), 16 W.C.A.T.R. 14, which considered the relationship between exposure to beta-naphthylamine and bladder cancer and *Decision No. 859/89* (1990), 16 W.C.A.T.R. 159, which considered dust exposure and chronic obstructive lung disease (COLD). *Decision No. 859/89* contains an interesting discussion of the problems associated with epidemiological evidence, given the amount of time and money needed to produce reliable studies.

For a general discussion of the Tribunal's obligation to adjudicate claims under the *Workers' Compensation Act* even though the scientific community has not reached a unanimous opinion on causation, see *Decision Nos. 1170/87* (May 2, 1990), *303/88* (1990), 13 W.C.A.T.R. 44, and *681/89* (March 13, 1990).

Occupational Stress

Occupational stress is an issue which has been discussed in prior annual reports and has also received some media attention during this reporting period. The Board is in the process of developing a policy on chronic occupational stress. Meanwhile, the Tribunal is called on to adjudicate stress claims as they arise.

Because of the evidentiary problems connected with deciding stress claims, a few early Tribunal decisions suggested that a special two-step inquiry was appropriate. Questions were subsequently raised as to whether this special inquiry changed the statutory burden of proof. The trend in more current Tribunal cases is to affirm that the usual standard of proof applies. These cases ask whether the evidence establishes on a balance of probabilities that the workplace was a significant contributing factor to the disability. See *Decision Nos. 145/89* (1990), 14 W.C.A.T.R. 74, *980/89* (1990), 13 W.C.A.T.R. 304, and *684/89* (1990), 16 W.C.A.T.R. 132, which left the standard of proof question open.

Decision No. 980/89 also outlined a three-part test for determining causation in stress cases. The Panel stated that it is necessary to establish:

- 1) that a psychological disability exists and disables the worker from performing the functions of the job;
- 2) that the disability is work-related — this requires evaluation of the various workplace stressors, including whether they are usual or not and whether other workers were affected;
- 3) if there is a disability and the workplace made a contribution, whether the workplace contributed significantly to the development of the disability — this requires a comparison of the worker's personal and work situations.

This approach was applied in *Decision No. 145/89* which was the first Tribunal decision to grant entitlement for a chronic stress claim. The case involved a long-distance trucker who had no pre-existing personality traits which predisposed him to developing this type of disability. He also was not subject to any significant personal stressors. The evidence established a number of work-related stressors: the worker was forced to perform long-haul driving with inexperienced co-drivers and was exposed to several motor vehicle accidents, one of which was particularly troubling to him. There was evidence that other long-haul truckers employed by this employer suffered burn-out to the point where the employer closed his business due to a lack of dependable drivers. The worker's symptoms cleared when he was removed from long-haul trucking. There were also medical opinions which supported the workplace's contribution to the disability.

Decision No. 684/89 is another instance of a chronic stress claim being allowed. The worker had been employed in a secure facility in a job involving the care, control and supervision of young offenders. Her work situation changed following legislative amendments which introduced older, more criminalized and more aggressive residents to the facility. There was also increased hostility and turbulence during the transitional period. The Panel concluded that the workplace stressors were predominant in contributing to the disability. The Panel also noted that review of the worker's private life for non-work stressors did not constitute an unjustified invasion of the worker's privacy.

A claim for a stress-related disability also came before the Panel in *Decision No. 322/89I* (November 19, 1990). The case involved a firefighter who claimed to suffer burn-out after 20 years of work in an understaffed department as well as stress from being demoted when his department was amalgamated with a larger one. The Panel requested further submissions on whether personnel actions could be considered compensable accidents and when mental injuries should be considered disabling.

Chronic Pain and Fibromyalgia

Appendix C to the Third Report reviewed the development of the Tribunal's and Board's treatment of chronic pain and fibromyalgia cases in some detail. On June 1, 1990, the WCB Board of Directors issued its section 86n review of *Decision Nos. 915, 915A*, etc. The following summary of the Board's *Review Decision 915 and 915A* is intended to provide a context for understanding the Tribunal's chronic pain and fibromyalgia cases. For a better knowledge of the Board's *Review Decision*, the full text should be read. It is reproduced as an Appendix to 15 W.C.A.T.R. at p. 247.

The *Review Decision* indicates the Board of Directors' view that the Board and Tribunal are in substantial agreement as to the way in which chronic pain and fibromyalgia cases should be adjudicated. The only significant point of difference identified in the *Review Decision* is the start date which should be chosen for retroactive payment of benefits.

The Board's Chronic Pain Disorder Policy originally adopted a start date of July 3, 1987. *Decision No. 915A* (1988), 7 W.C.A.T.R. 269, held that principles of good public administration required that March 27, 1986 (the date on which the overruling process began at the Tribunal), should be the effective date for payment of benefits for chronic pain. While the *Review Decision* indicates that a number of different start dates might well accord with the objectives of the *Workers' Compensation Act*, the Board of Directors felt that there was no fundamental dispute between the Board of Directors and the Tribunal. Without foreclosing its right to develop criteria which might lead to a different determination with respect to retroactivity on other policy matters, the Board of Directors decided to accept the Tribunal's start date. The Board of Directors indicated that it was influenced by the length of time the entire process had taken and the relatively small difference between the two dates. Accordingly, the *Review Decision* concluded that there was no need to instruct the Tribunal to reconsider *Decision Nos. 915 or 915A*.

Only one issue that arose in the review process leading up to the *Review Decision* remained outstanding at the end of the reporting period. A number of Tribunal decisions included in the review had awarded temporary benefits for chronic pain prior to March 27, 1986. Counsel to the Board of Directors had previously indicated to the parties involved in those cases that they would have an opportunity to make submissions in each of those cases on how the Board should exercise its section 86n discretion to direct the Tribunal to reconsider. Submissions were obtained and the Board of Directors' determination on that issue in these cases was still pending at the close of the reporting period.

The Board of Directors' *Review Decision* also directed Board staff to review the appropriateness of the Board's clinical rating schedule for chronic pain disorder, as well as the schedules for post-traumatic psychiatric disorders and fibromyalgia. A staff review was also directed on the length of time temporary benefits should be payable for chronic pain in light of the threshold test of "six months past normal healing time" in the chronic pain disorder policy.

On October 5, 1990, the Board of Directors abolished the rating schedule for chronic pain and made the psychotraumatic disability rating schedule applicable to chronic pain and fibromyalgia as well as psychotraumatic disabilities. The schedule was renamed the "Psychotraumatic and Behavioural Disorders Rating Schedule". At the same time, the Board of Directors reaffirmed that "six months beyond the usual healing time" should be viewed as the usual time for rating workers with chronic pain and fibromyalgia, but that decision-makers must look to general principles for determining maximum medical rehabilitation to ensure that individual differences are considered.

Turning to the Tribunal's treatment of chronic pain, a number of panels assessed pensions in chronic pain and fibromyalgia cases. As noted in *Decision No. 106/89* (1990), 16 W.C.A.T.R. 59, panels still face the difficult task of distinguishing between psychogenic pain (chronic pain and mixed pain), and psychotraumatic pain in cases where benefits are claimed before March 1986. However, over time, there should be less need to make these difficult distinctions.

The adoption of a chronic-pain policy by the Board does not mean that all workers receiving pensions, and suffering from chronic pain, will necessarily receive increased benefits. Some older Board decisions may already have compensated chronic pain to some extent, given the difficulty in distinguishing organic and non-organic pain. Thus, where a panel was satisfied that the existing pension award in fact adequately compensated for the organic *and* non-organic disability, no further pension for chronic pain was awarded. See *Decision No. 519/89* (1990), 13 W.C.A.T.R. 208. However, where a panel determined that the worker's condition, while predominantly organic, was not adequately compensated by an organic pension, it directed the Board to re-assess the worker to compensate for the chronic pain and related drug dependency. See *Decision No. 671/90I* (1990), 16 W.C.A.T.R. 284.

The Tribunal has also addressed some complexities which have arisen from the evolution of the system's understanding of chronic pain and fibromyalgia. For example, the Board's decision to use the psychotraumatic rating schedule to assess benefits for fibromyalgia pre-July 3, 1987, does not mean that there must be evidence of psychotraumatic disability, rather than fibromyalgia, for entitlement. See *Decision No. 337/90* (August 9, 1990). Some confusion has also arisen from the requirement of a "marked life disruption" in chronic pain cases. Pensions for chronic pain, like all other pensions granted under the pre-1989 Act, are intended to compensate for impairment of earning capacity. Marked life disruption in non-work areas must be considered as part of the evidence of impairment because of the difficulties in assessing such a subjective condition, but the pre-1989 Act does not compensate marked life disruption as such. See *Decision No. 865/89* (May 11, 1990).

Pension Assessments

During this reporting period, the Tribunal continued to gain experience in assessing pensions, including experience in cases where no Board guidelines exist. In such cases, the Tribunal must determine what other material will be helpful in understanding and rating the condition. *Decision No. 135/90* (1990), 14 W.C.A.T.R. 266, looked at the American Medical Association (AMA) Guidelines on vascular disease and the Board's guidelines on hand amputations in assessing a pension for a severe case of white finger disease. Similarly, in a case involving an extraordinarily severe tinnitus disability, the Panel determined that the rating schedule for tinnitus did not compensate for all aspects of the worker's disability and turned to the psychotraumatic rating schedule for assistance. See *Decision No. 876/88* (1990), 13 W.C.A.T.R. 89. And see *Decision No. 807/88F* (April 6, 1990), for a similar approach to eye injuries.

The Tribunal has also considered whether particular rating schedules are consistent with the Act or with other rating schedules. *Decision No. 453/89* (1990), 15 W.C.A.T.R. 81, upheld the Board's policy of compensating for eye injuries based on the level of vision after correction with glasses since there is typically no impairment of earning capacity in such cases. And see *Decision No. 68/90* (1990), 16 W.C.A.T.R. 211, which compared the Board's rating schedules for knees and backs.

The Board's policy on enhancement factors, or multiple factors as they are sometimes known, was also reviewed. *Decision No. 831/88F* (1990), 16 W.C.A.T.R. 26, found that this policy applied when a disability existed bilaterally in limbs. The Panel felt that there was a direct functional relationship between the foot and knee, and applied a multiple factor to the entire limb. *Decision No. 565/89* (1990), 16 W.C.A.T.R. 121, found that, given the availability of the whole-person approach in the assessment of pensions, it was not necessary to consider a specific enhancement factor.

Worker versus Independent Operator

An issue which has arisen frequently is whether a person is a “worker” under the Act or an independent operator. Tribunal decisions have looked to the common law in answering this question, and generally favoured the more recent “organizational test” over the older “control test”. The “organizational test” was felt to be more likely to determine the substance of the work relationship. In this reporting period, several decisions have stressed that all the evidence must be assessed in determining the substance of the working relationship. See *Decision No. 478/90* (August 17, 1990) which generally applied the organizational test while noting that all evidence must be reviewed. *Decision No. 729/90I* (November 5, 1990) adopted a hybrid test, incorporating elements of the “control” and “organizational test” with other considerations. *Decision No. 729/90I* proposed that the real question was whether the person was a sufficiently independent business entity that he or she ought to bear the costs and risks of compensation. More recently, *Decision No. 921/89* (1990), 14 W.C.A.T.R. 207, commented on the evolution of the worker/independent operator test. It agreed that the entire work relationship should be examined and proposed a “business reality test” based on a list of 11 factors.

Transfer of Costs Between Employers

In cases involving negligence and more than one employer, the Act enables the Board to transfer all or part of the costs of an accident to a different class or group of employers where the Board is satisfied that the negligence of a Schedule 1 employer other than the injured worker’s employer has contributed to the injury. Early Tribunal decisions held that this section only applied where there was “clear evidence” of negligence. However, *Decision Nos. 17/89* (1990), 16 W.C.A.T.R. 46, and *688/89* (1990), 14 W.C.A.T.R. 156, held that the usual common law standard of negligence applies. A transfer of costs may be authorized where negligence is proved on a balance of probabilities. Since a transfer of costs is discretionary, the Tribunal referred the amount of the transfer back to the Board for determination in light of the Tribunal’s findings on negligence and other policy concerns the Board might have.

Experience Rating

This reporting period saw three challenges to the Board’s CAD-7 experience rating plan which is used to calculate employer assessments in certain industries. While the CAD-7 plan was upheld as generally consistent with the Act, *Decision No. 86/89* (1990), 14 W.C.A.T.R. 63, held that the Tribunal had jurisdiction to hear all aspects of an assessment appeal, including the application of the CAD-7 formula to the facts of the case and whether the whole plan or details of it conform to the Act. The Board’s decisions should be treated with deference since the Board is given a broad statutory discretion in developing assessment plans and has particular expertise in this complex area. The systemic perspective — to treat similarly situated employers similarly — is particularly important but does not prevent an individual employer from challenging aspects of the CAD-7 formula.

Decision No. 894/89 (1990), 14 W.C.A.T.R. 194, and *Decision No. 296/90* (1990), 14 W.C.A.T.R. 346, took the same general approach, but noted two qualifications. *Decision No. 894/89* held that the Board is not entitled to completely fetter its discretion and apply the CAD-7 formula strictly, without regard to whether the formula produces an unfair or unreasonable result. *Decision No. 296/90* held that the Board's discretion cannot deprive the Tribunal of its jurisdiction to look at the business reality of the situation, such as whether a successor company is, in essence, a new company or not.

Penalty Assessments

The Tribunal has also considered whether different factors should be considered in revoking a penalty assessment. For example, should a penalty be removed where the employer is a charitable organization? Is it relevant that the employers in a group are not homogeneous, and most members of the group benefit from a lower accident rate because one employer handles more dangerous work? See *Decision Nos. 39/90* (1990), 13 W.C.A.T.R. 333, and *443/90* (1990), 16 W.C.A.T.R. 253.

Canadian Charter of Rights

The *Canadian Charter of Rights and Freedoms* is part of the Constitution of Canada and protects the civil liberties of Canadians. Section 24(1) of the Charter provides that anyone whose rights or freedoms have been violated, may apply to a "court of competent jurisdiction" to obtain such remedy as the court considers just in the circumstances. Section 52(1) provides that the Constitution is the "supreme law" of Canada, and any law that is inconsistent with the Constitution is "to the extent of the inconsistency, of no force or effect".

A number of courts and administrative tribunals have considered the legal question of whether an administrative tribunal has jurisdiction to decide Charter challenges to its governing legislation. If an administrative tribunal does have such jurisdiction, does it have the power to grant remedies under section 24(1) of the Charter, or is it limited to holding under section 52(1) that a particular statutory provision is of no force or effect in the circumstances of the particular case?

Charter challenges have been made in only a few Tribunal cases. The most comprehensive decision to date, *Decision No. 534/90I* (1990), 17 W.C.A.T.R. 187, was issued in this reporting period. It had the benefit of considering a recent Ontario Court of Appeal decision, *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)* (1989), 62 D.L.R. (4th) 125 (now on appeal to the Supreme Court of Canada). *Decision No. 534/90I* held that the Tribunal was not a "court of competent jurisdiction" and could not grant remedies under section 24 of the Charter. However, it also found that the *Cuddy Chicks* decision was binding on the Tribunal and gave the Tribunal jurisdiction to deal with challenges under section 52(1) of the Constitution. The Panel noted that *Cuddy Chicks* did not consider whether the Tribunal is *obligated* to hear Charter challenges raised by parties or whether the Tribunal may determine that it is more appropriate for the parties to bring a court action. *Decision No. 534/90I* asked the parties for submissions on whether the Tribunal had a discretion to decline to hear a Charter challenge and, if so, what criteria it should apply in exercising such a discretion. No submissions were received by the end of the reporting period.

Other

Other interesting legal and medical issues which have come before the Tribunal include the retroactivity of benefits in industrial disease cases (*Decision No. 420/88* (1990), 14 W.C.A.T.R. 7), and the retroactivity of interest payments (*Decision No. 467/89* (1990), 14 W.C.A.T.R. 117); the question of who is a "dependant" of a deceased worker in cases involving separated spouses and other non-traditional family arrangements (*Decision Nos. 560/90* (1990), 17 W.C.A.T.R. 236, and *632/90* (1990), 16 W.C.A.T.R. 268), and the compensability of on-the-job heart attacks (*Decision Nos. 240/89* (1990), 16 W.C.A.T.R. 113, and *544/89* (September 4, 1990)).

Another issue which has continued to receive attention is what types of payments should be treated as part of a worker's earnings basis for the purpose of calculating benefits. See *Decision Nos. 362/90* (1990), 15 W.C.A.T.R. 195, *75/90* (May 14, 1990), *948/88* (1990), 16 W.C.A.T.R. 32, and *797/89* (1990), 14 W.C.A.T.R. 175.

JUDICIAL REVIEW ACTIVITY

In 1990, three applications for judicial review were heard by the Divisional Court. The decisions subject to the applications were:

- 1) *Decision No. 462/88* dated November 23, 1988, heard February 7, 1990;
- 2) *Decision Nos. 695/88, 696/88* (1989), 10 W.C.A.T.R. 308, and *697/88*, all dated March 9, 1989, *Decision No. 850/87* dated February 11, 1988, *Decision No. 981/87* dated June 3, 1988, *Decision No. 850/87R* (1990), 14 W.C.A.T.R. 1, and *Decision No. 981/87R* dated March 23, 1990, all seven of which were heard together on November 29, 1990;
- 3) *Decision No. 258/90* dated April 23, 1990, heard December 7, 1990.

All three applications were dismissed.

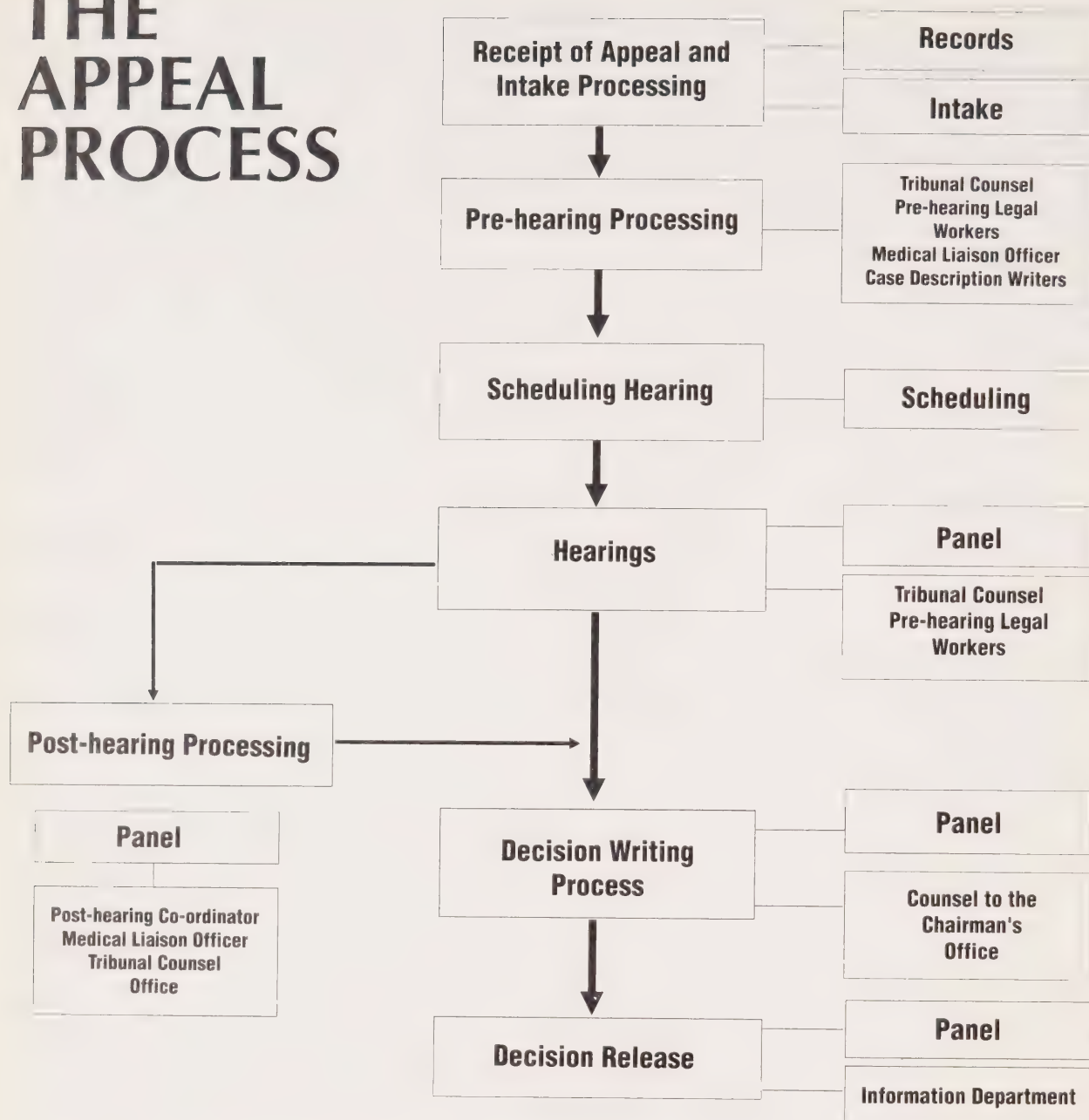
At the end of 1990 there were five applications for judicial review outstanding. These are applications for review of:

Decision No. 799/87 dated September 3, 1987;
Decision No. 298/88 (1988), 9 W.C.A.T.R. 281;
Decision No. 656/88 dated December 9, 1988;
Decision No. 917/88 dated August 11, 1989; and
Decision No. 977/89 (1990), 13 W.C.A.T.R. 298.

A motion for leave to appeal has been filed with respect to the Divisional Court's dismissal of the application respecting the seven decisions heard on November 29, 1990.

There is also an earlier motion for leave to appeal from a decision of the Divisional Court which remains outstanding. This involves *Decision No. 525* dated March 19, 1987. The application for judicial review was dismissed June 9, 1988, and the motion for leave to appeal was filed June 30, 1988. No further action has been taken since that date.

THE APPEAL PROCESS



Special and Administrative Services

- Systems Department
- Finance and Administration
- French Translation Services
- Information Department (Library and Publications)
- Human Resources
- Reproduction and Mail Room
- Secretarial Services
- Statistical Services (Data Processing and Reports)
- Word Processing Centre

THE TRIBUNAL REPORT

THE APPEAL PROCESS

The appeal process used by the Tribunal has been represented graphically as a flow chart on the facing page.

VICE-CHAIRS, MEMBERS AND STAFF

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors active during the reporting period, as well as a record of roster changes and résumés for newly appointed Vice-Chairs and Members can be found in Appendix A.

TRIBUNAL COUNSEL OFFICE

The Tribunal Counsel Office (TCO) consists of six groups, each reporting to the General Counsel.

Intake

The Intake Department, in addition to handling all incoming appeal applications and the public's questions about appeals and about the appeal process, has been primarily responsible for all the Tribunal's "special section" cases. The special section cases include Section 77 access to information cases, Section 21 employer requests for medical examinations, and Section 15 cases on the right to maintain civil actions for damages. In 1990, the Tribunal also received its first appeal on the issue of Re-employment, under section 54b of the Act.

The legal aspects of this work are carried out under the review of TCO lawyers. Special section cases constitute approximately 30 per cent of the Tribunal's incoming cases and often involve complex legal questions.

The Intake Department is headed by the Intake Manager.

Case Description Writers

Case Description Writers are responsible for preparing all cases for hearing according to a standardised model and within certain time limits.

In 1990, TCO commenced the use of specialised case description writers for Section 77 appeals, to ensure that these appeals are handled as expeditiously as possible.

The Case Description group works under the supervision of a senior TCO lawyer.

Pre-hearing Legal Workers

When the Case Description is complete, the case is scheduled and transferred either to a legal worker or, for the most complex appeals, to a lawyer. Approximately 90 per cent of cases are handled by legal workers. These legal workers deal with matters that arise pre-hearing and may provide assistance to parties if there are questions respecting the preparation of the cases

In 1990, the pre-hearing legal worker group was expanded from the original group of four pre-hearing legal workers. It now includes a Manager of the pre-hearing group, three senior legal workers and three pre-hearing legal workers.

Lawyers

Lawyers handle a small number of complex cases involving novel legal issues or issues which have been identified as involving a significant Tribunal interest. TCO lawyers report directly to the General Counsel.

Lawyers may, with the permission of the hearing panel, attend hearings to cross-question witnesses or may provide the panel with evidence, usually in the form of expert evidence from one of the Tribunal's medical assessors. The purpose of these functions is to ensure that there is an adequate record before the panel. Lawyers may also make submissions on matters of law either by way of written submissions or orally at the hearing, at the request of the hearing panel. However, TCO lawyers do not make submissions on issues of fact and all submissions are presented in as neutral a manner as possible.

In 1990, the number of lawyers employed by TCO exclusive of General Counsel was reduced by three, from eight to five, in parallel with the increase in the number of legal workers in the pre-hearing group. This change reflects the fact that as the Tribunal matures there are fewer novel issues requiring input from the Tribunal's own lawyers.

Medical Liaison Office

The Medical Liaison Office reviews all completed case descriptions, identifies whether further medical investigation is required, and, if it is, whether it can be obtained from the treating physicians or from one of the Tribunal's section 86h assessors.

The office is headed by the Manager, Medical Liaison Office.

Medical Counsellors

Counsellors still routinely participate in a pre-hearing review process to assess whether the medical record is complete and contains appropriate medical investigation and reporting. This process may result in the Tribunal Counsel Office advising the parties that the following additional medical investigation may be of assistance to the Panel:

- 1) filling of gaps in medical reporting;
- 2) clarification of findings, etc., from reporting physicians;
- 3) medical discussion papers or general information specific to the medical condition in that appeal;
- 4) independent medical information from one of the Tribunal's section 86h assessors.

In addition to the above activities, Counsellors continue to monitor the sufficiency and quality of the Tribunal's Medical Assessor roster. Appointments of some of the leading practitioners in several highly specialized areas of medicine were initiated this year on Counsellor recommendation to ensure that the Tribunal is aware of emerging generic issues from a medical professional's perspective.

Counsellors participate in an internal review process which assesses the manner in which medical fact or theory is treated and recorded by lay adjudicators. Through an evaluation of released decisions, the Tribunal is able to evaluate its processes and practices as they relate to medical issues and medical evidence, and to evaluate its understanding of medical issues and evidence.

Sadly, one of the Tribunal's original Counsellors, Dr. Jack Soper Crawford (Ophthalmology), passed away in June 1990. Dr. Crawford had participated in several in-house lectures on eye diseases and injuries, and was responsible for developing the high quality of Ophthalmology Assessors on the 86h roster. Dr. Crawford's replacement beginning January 1991 is Dr. John Speakman. Dr. Speakman is Professor, Department of Ophthalmology at the University of Toronto, Staff Ophthalmologist at Sunnybrook Medical Centre and Senior Staff Ophthalmologist at Toronto Hospital (Toronto General Division).

Medical Assessors

Of the Tribunal's original 21 Assessors appointed to the 86h roster in June 1987, all agreed to re-appointment this year with the exception of one who left Canada and one who retired. This brings the total number of Assessors, including those currently in the appointment process, to 163.

With respect to diseases associated with the workplace, the Tribunal is very pleased to have on its roster two physicians who oversee occupational health centres at university-affiliated teaching hospitals — St. Michael's Occupational and Environmental Health Unit (associated with the University of Toronto), and McMaster Medical Centre, Occupational Health Clinic (through McMaster University, in Hamilton). These centres broaden the Tribunal's access to many specialized professionals such as toxicologists, industrial hygienists, chemists, etc., who are highly experienced clinicians and academics.

A similar multi-disciplinary team of practitioners is available to the Tribunal through the Irene Smythe Pain Clinic at the Toronto Hospital (Toronto General Division) and the Pain Investigation Unit at Toronto Western Hospital, two of Canada's leading facilities for research into the understanding and treatment of pain. The directors at both of these centres are on our 86h roster.

A selection of some of the more complex medical issues that were considered by the Tribunal this year is reported elsewhere in this report. Beginning this year, our library will have all substantial medical reports and literature reviews conducted by 86h Assessors. It is hoped that this information will provide researchers with a wealth of medical information and examples of how this information is treated and recorded in Tribunal decisions.

Post-hearing Legal Workers

When the panel identifies that additional information is required after a hearing, a request is made to the post-hearing legal workers, who co-ordinate this continuing investigation. The post-hearing legal workers report directly to General Counsel through a group leader.

INFORMATION DEPARTMENT

The Information Department has responsibility for the Publications and Library functions of the Tribunal, offering information-related services to Tribunal staff, members and the general public.

Publications

The *Decision Digest Service* (DDS) was successfully introduced in 1990. It contains the summaries for all Tribunal decisions released since December 15, 1989. The summaries can be accessed either by subject matter (through the Keyword Index) or by section of the Act and its regulations (through the Annotated Statute). For 1991, additions to the Cumulative Index binder, which forms part of the DDS, will result in the various keyword index and annotated statute segments of the DDS being extended to cover all of the decisions released since the Tribunal's inception in 1985. The Keyword Guide will also be added to the Cumulative Index binder in 1991.

This increased availability of the Keyword Index and the Keyword Guide has given us cause to place greater emphasis on the continuing review and refinement of the keyword terms to ensure consistency in the classification of Tribunal decisions.

The headnotes of Tribunal decisions published in the *W.C.A.T. Reporter* now appear in French as well as in English. Arrangements have been made with the WCB that allow for the publication, in the Reporter, of reviews of Tribunal decisions undertaken by the WCB Board of Directors, pursuant to section 86n of the *Workers' Compensation Act*.

Publication of a Tribunal newsletter, *WCAT In Focus*, began in 1990. In addition to allowing the Tribunal to communicate more effectively with its various interest groups, the newsletter's wide circulation has led to a greatly increased readership for other Tribunal publications such as the *Compensation Appeals Forum*, the *Annual Report* and *Researching Workers' Compensation Appeals Tribunal Decisions*.

The brochure, *A Straightforward Guide to the Workers' Compensation Appeals Tribunal*, has proven to be very popular, with some 10,000 copies in print. The wider circulation of this brochure has been facilitated by distribution arrangements with CLEO (Community Legal Education Ontario) and the Workers' Compensation Board.

The Information Department proposes to make staff available to hold training sessions on how to research Tribunal decisions, using Tribunal publications. Such sessions could be held throughout the province as demand and numbers warrant.

Library Highlights

Book Catalogue

Access to the book collection was improved through the following initiatives: the government publications collection was reclassified and integrated with the main collection; both the subject cataloguing and classification policies were reviewed and necessary revisions made; records from all documents were updated to conform with the new standards.

Acquisitions

During the year, 330 books and government documents were added to the collection, 1,694 records were added to the library file database, 274 records were added to a caselaw database.

Periodicals

The library's records of periodical acquisitions were transferred from a card system to a computer database.

Periodicals being received in the Systems Department were integrated into the library collection and extra shelving added to accommodate them.

Interlibrary loan (ILL)

Nine hundred and six items were obtained using ILL.

Caselaw

The library's collection of Tribunal decisions was rehoused in permanent and distinctive binders with an improved tab system for locating individual decisions.

The collection of court decisions dealing with workers' compensation and administrative law was also transferred into permanent binders and the caselaw database is being updated to provide exact location information.

SYSTEMS DEPARTMENT

Changes in senior management structure at the Tribunal during 1990 affected the Systems Department through the creation of the position of Chief Information Officer. The Systems Manager now reports to the CIO. The Chief Information Officer is responsible for the overall direction and strategic planning of the Tribunal's information technology resources.

As of the end of 1990, the Systems Department was in the final stages of completing a plan for the Tribunal's future use of information technology, a business case in support of a 1991 upgrade in the Tribunal's hardware resources and a plan for the 1991 installation of a case tracking system.

Overall, the Tribunal is making efficient use of its current technology and planning for the future in ways that will make use of the current investment in systems.

FRENCH LANGUAGE SERVICES

The Tribunal has completed the integration of French language services throughout most of its operation, with the exception of some reference materials. On staff in Reception, Intake and TCO are qualified persons who are able to answer French inquiries and handle French-speaking appellant's files among their regular functions. All hearing documentation, including application forms, general information and practice directions, is available in French and summaries of cases are translated into French for French language hearings. The Tribunal employs a full-time translator. French-speaking Panels are available for hearings which are conducted in French at the request of the appellant in accordance with the provisions of the *French Language Services Act*.

YEAR END STATISTICAL SUMMARY

Introduction

There are five sections in this statistical summary. The first is a brief overview detailing the Tribunal's history in terms of files received, files closed, and the inventory of files yet to be completed as at December 31, 1990. The second section provides a more detailed view of the cases received and cases closed. The third section focuses on the Tribunal's hearings and decision production for the year, examining both cases and total numbers of hearings and decisions. (This is an important distinction, since for any given case there may be one hearing or more, and for each hearing, there may be one decision or more.) It begins with an accounting of the hearings that were conducted, then of the cases closed at the pre- and post-hearing stages. There is then a further accounting of the decisions released. Finally, this section examines the time taken to resolve appeals, particularly in light of the Tribunal's four-month "turnaround" objective. The fourth section outlines the types of representatives appearing for parties at hearings, and the fifth section presents an accounting of the year-end case inventory.

Overview

The Tribunal was established in October of 1985 and by December 31 of that same year, 1,057 files had been received. Ten of these files were completed by year end and the remaining files were carried over into the next year of operation. In 1986, an additional 2,089 files were received. During this first full year of operation, 646 files were completed. The number of files in inventory (unresolved cases) had therefore reached approximately 2,500 by December 31, 1986.

In 1987, the Tribunal began to eliminate some of this cumulative inventory. The Tribunal closed 18 files more than it opened (1,765 files were received and 1,783 were closed). In 1988, 1,559 were received and 2,022 were closed. The cumulative inventory was thus reduced by 463 in 1988. In 1989, there were again more files completed (2,016) than received (1,616) and the inventory was reduced by another 400 cases. In 1990, the number of files completed (1,578) was also larger than the number of files received (1,516) and the cumulative inventory was reduced again (by a total of 62 cases). (See Figure 2)

The average "open age" of all cases received in 1990 (time elapsed since intake work was completed, excluding cases subject to the WCB chronic pain review process) was 177 days. This was slightly higher than for the average open age of cases that were received in 1989 and were in the 1989 year end inventory (139 days).

Incoming Cases and Cases Closed

Incoming Cases

The pattern of incoming cases for 1990 was very similar to the pattern displayed in the previous two years. In general terms, appeals relating to entitlement to workers' compensation benefits (entitlement and "other" appeal types) accounted for the majority of cases (56 per cent), cases relating to specific sections of the *Workers' Compensation Act* accounted for 33 per cent and "post-decision" issue cases (requests for reconsideration of earlier decisions, Ombudsman inquiries and judicial reviews) accounted for the remaining 11 per cent. (See Figure 3)

FIGURE 2

INCOMING FILES AND FILES COMPLETED

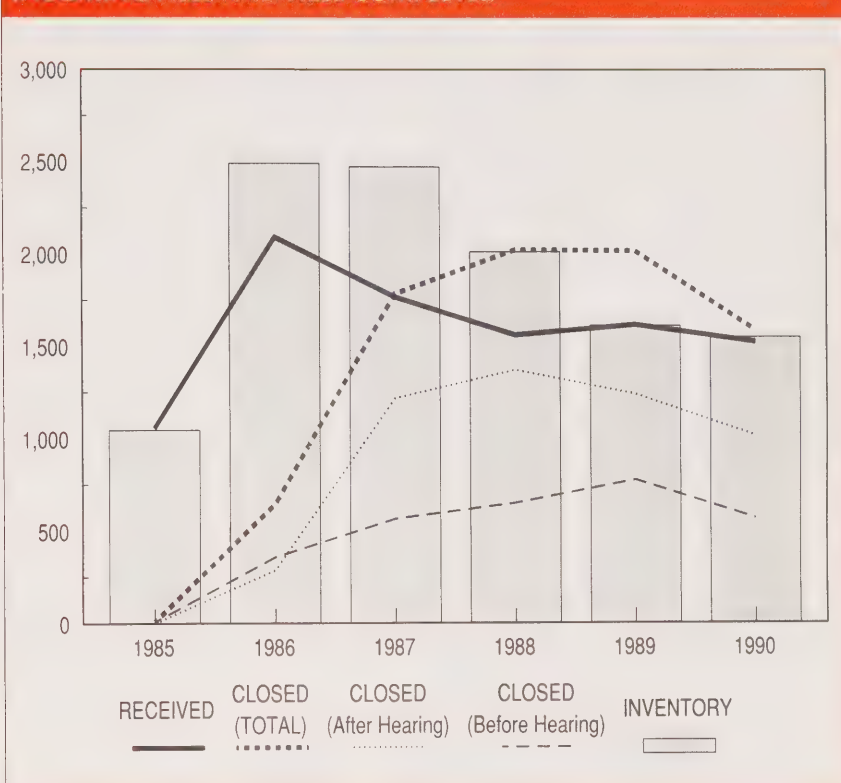


FIGURE 3

INCOMING CASELOAD BY TYPE

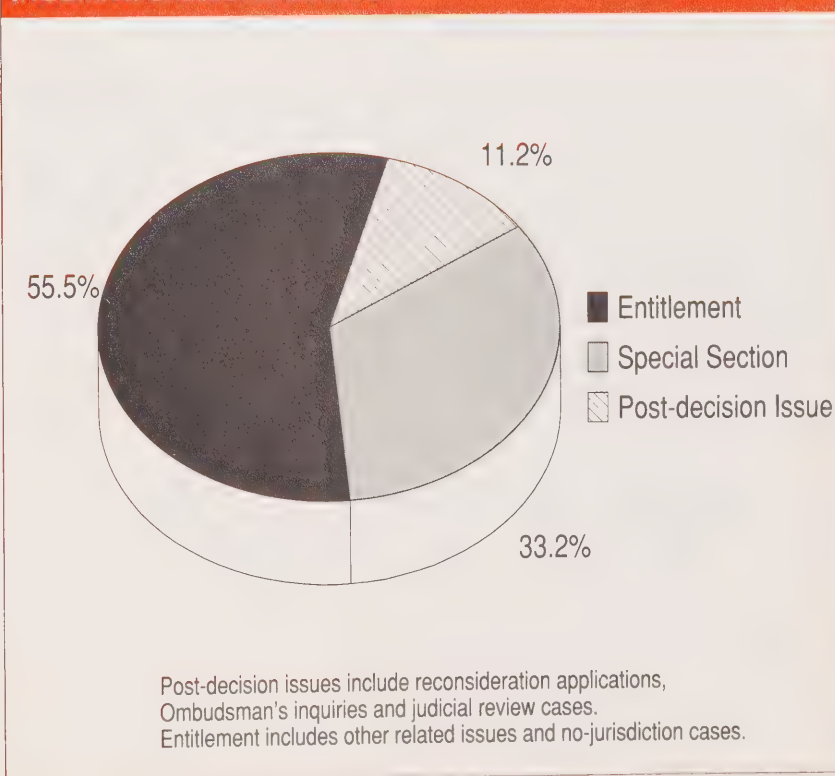


FIGURE 4

ANNUAL BREAKDOWN OF INCOMING CASES

Type	1987		1988		1989		1990		Total (All Years*)
	Number	(%)	Number	(%)	Number	(%)	Number	(%)	Number (%)
Section 86o	115	6.5	78	5.0	46	2.8	42	2.8	642 6.7
Section 15	101	5.7	89	5.7	89	5.5	120	7.9	542 5.6
Section 21	79	4.5	82	5.3	66	4.1	51	3.4	339 3.5
Section 77	298	16.9	258	16.5	295	18.3	283	18.7	1,310 13.6
Section 77 (Objection)	14	0.8	10	0.6	10	0.6	8	0.5	66 0.7
Special Section	607	34.4	517	33.2	506	31.3	504	33.2	2,899 30.2
Pension	119	6.7	44	2.8	40	2.5	20	1.3	568 5.9
Commutation	24	1.4	38	2.4	35	2.2	16	1.1	117 1.2
Employer Assessment	17	1.0	33	2.1	26	1.6	26	1.7	142 1.5
Entitlement	833	47.2	707	45.3	686	42.5	752	49.6	4,757 49.5
Entitlement & Other	993	56.3	822	52.7	787	48.7	814	53.7	5,584 58.2
Judicial Review	6	0.3	4	0.3	2	0.1	10	0.7	25 0.3
Ombudsman's Request	60	3.4	84	5.4	108	6.7	82	5.4	345 3.6
Reconsideration	50	2.8	75	4.8	102	6.3	78	5.1	330 3.4
Clarification	1	0.1	2	0.1	1	0.1	0	0.0	4 0.0
Post-decision	117	6.6	165	10.6	213	13.2	170	11.2	704 7.3
No-jurisdiction	48	2.7	55	3.5	110	6.8	28	1.8	415 4.3
TOTAL INCOMING	1,765		1,559		1,616		1,516		9,602

* Note: The Total (All Years) represents all cases, including those received prior to January 1, 1987.

As one might expect, the number of post-decision cases had been gradually increasing in number, to the point where, in 1989, they represented 13 per cent of all incoming cases. (The workers' compensation legislation permits applications to reconsider or review decisions, therefore it follows that these kinds of requests would increase as the number of decisions increased.) This year's number of post-decision cases (170) represented a slightly reduced proportion of all cases received in 1990 (11 per cent). It is also interesting to note that in 1990, the proportion of entitlement appeals, actually increased by 5 per cent over the previous year's level, thereby reversing another trend. In 1985, entitlement appeals represented 82 per cent of all cases however, by 1989, entitlement appeals had decreased steadily to 49 per cent of incoming cases. In 1990, however, entitlement appeals had increased again to 54 per cent.

It is interesting as well to note that in 1990 the Tribunal experienced the lowest percentage of no-jurisdiction cases (less than 2 per cent of all incoming appeals). In 1989, this case type had represented nearly 7 per cent of all incoming cases. However, this recent reduction mainly reflects the renewed efforts of the Tribunal's Intake Department to provide potential appellants with more, and earlier, information about the appeal process, the nature of the Tribunal and the Tribunal's jurisdiction. (See Figure 4)

FIGURE 5

ANNUAL BREAKDOWN OF CASES CLOSED

Type	1987 Number (%)		1988 Number (%)		1989 Number (%)		1990 Number (%)		Total (All Years*) Number (%)	
Section 86o	235	13.2	127	6.3	120	6.0	54	3.4	595	7.4
Section 15	144	8.1	99	4.9	79	3.9	118	7.5	466	5.8
Section 21	88	4.9	87	4.3	73	3.6	45	2.9	322	4.0
Section 77	348	19.5	288	14.2	230	11.4	296	18.8	1,203	14.9
Section 77(Objection)	24	1.3	15	0.7	7	0.3	7	0.4	54	0.7
Special Section	839	47.1	616	30.5	509	25.2	520	33.0	2,640	32.8
Pension	19	1.1	91	4.5	123	6.1	100	6.3	340	4.2
Commutation	7	0.4	26	1.3	46	2.3	29	1.8	108	1.3
Employer Assessment.	18	1.0	26	1.3	24	1.2	28	1.8	104	1.3
Entitlement	777	43.6	1,097	54.3	1,015	50.3	685	43.4	3,904	48.5
Entitlement & Other	821	46.0	1,240	61.3	1,208	59.9	842	53.4	4,456	55.3
Judicial Review	3	0.2	2	0.1	5	0.2	3	0.2	13	0.2
Ombudsman's Request	17	1.0	53	2.6	82	4.1	101	6.4	254	3.2
Reconsideration	39	2.2	52	2.6	104	5.2	78	4.9	278	3.5
Clarification	0	0.0	3	0.1	0	0.0	1	0.1	4	0.0
Post-decision	59	3.3	110	5.4	191	9.5	183	11.6	549	6.8
No-jurisdiction	64	3.6	56	2.8	108	5.4	33	2.1	410	5.1
TOTAL CLOSED	1,783		2,022		2,016		1,578		8,055	

*Note: The Total (All Years) represents all cases, including those received prior to January 1, 1987.

Cases Closed

When the disposition of cases is examined by appeal type some interesting observations may be noted. The proportions of cases closed in 1990 in the special section and entitlement groups were representative of their overall proportions for all years combined. Special section cases represented 33 per cent of all cases closed in 1990 compared with an overall average of 32.8 per cent. Entitlement appeal types represented 53 per cent in 1990 compared with 55 per cent for all years combined. By contrast, the proportions of cases closed in 1990 in the post-decision and no-jurisdiction appeal categories were not representative of their overall proportions for all years combined. Post-decision issue cases represented nearly 12 per cent of all cases closed in 1990 compared with 7 per cent of all years combined. It is clear from the data that post-decision cases have been gradually increasing in proportional terms over the years. Interestingly, for no-jurisdiction cases, the trend has been in the opposite direction. No-jurisdiction cases represented approximately 2 per cent of cases closed in 1990 compared with an overall average of 5 per cent. (See Figure 5)

FIGURE 6

CASES HEARD AT THE TRIBUNAL

NEW CASES:	Oral Hearings	867	
	Written Submissions	160	
	Motions Days	58	1,085
POST-DECISION CASES:	Oral Hearings	12	
	Written Submissions	3	
	Panel Reviews	63	78
TOTAL HEARINGS CONDUCTED:			1,163

1990 Production Measures

Hearings

In 1990, 1,085 new cases went to hearing(s). For most cases, oral hearings were conducted (867, or 80 per cent). Written submissions replaced oral hearings in 160 cases (15 per cent), and "Motions Days" (58, or 5 per cent) accounted for the remaining new case hearings. In addition, there were 78 post-decision cases heard. Twelve of these post-decision cases received oral hearings (15 per cent) and 3 (4 per cent) were dealt with by written submissions. The remaining 63 (81 per cent) did not have formal hearings, but were nonetheless deliberated upon by WCAT panels. There were, therefore, a total of 1,163 hearings in 1990. (See Figure 6)

Cases Closed

Closed without hearing

Approximately one-third of the cases that were completed at the Tribunal in 1990 did not reach the hearing stage (565 of 1,578 completed cases, or 36 per cent). For new cases (456) these are largely accounted for by withdrawals (294, or 64 per cent).

For post-decision cases (109), they are represented largely by Ombudsman cases (93) where the issue was not pursued (i.e., where the Ombudsman dismissed the complaint). In three cases, the complaint was made before the courts in the form of an application for judicial review (all three were dismissed), and the remaining post-decision issue cases were either withdrawn (11) or closed due to inactivity (two). (See Figure 7)

Closed after a hearing but without a decision

In 1990, there were 28 cases closed after hearings without formal decisions released (2 per cent of cases closed). Most of these (26) were for post-decision cases (reconsiderations), of which nearly all (22) were denied. These are the cases where the panels concluded on a paper review that the reconsideration request was clearly without merit and so advised the Tribunal Chair. Formal decisions were not issued. The remaining (four) post-decision cases in this category were withdrawn. For new cases, both cases were withdrawn during the hearing process.

These cases were resolved by letters or memoranda rather than by formal decision.

FIGURE 7

CASES CLOSED WITHOUT A HEARING

	Number	%
NEW APPEALS		
Settled	45	9.87
No-jurisdiction	38	8.33
Withdrawn	294	64.47
Inactive	79	17.32
Total	456	100.00
POST-DECISION		
Completed	96	88.07
Withdrawn	11	10.09
Inactive	2	1.83
Total	109	100.00
TOTAL	565	

FIGURE 8

CASES CLOSED BY DECISION

	Number	%
NEW APPEALS		
Completed	931	99.36
No-jurisdiction	1	0.11
Withdrawn	5	0.53
Inactive	0	0.00
Total	937	100.00
POST-DECISION		
Completed	48	100.00
Withdrawn	0	0.00
Inactive	0	0.00
Total	48	100.00
TOTAL	985	

Note: Some cases required both interim and final decisions. The total number of decisions issued (1,081) therefore exceeds the number of cases closed by a decision.

Closed by decision

Most of the cases closed at the Tribunal in 1990 were closed by decision (985, or 62 per cent). For new appeals, 931 were closed by decision, five were withdrawn with a formal decision also released, and one was no-jurisdiction with a decision released. For post-decision cases, 48 were closed by decision. (See Figure 8)

Decisions Released

It is important to recognize that a case may involve more than one decision. For some cases, a decision must be rendered on an "interim" issue before a main issue can be resolved. This applies to both new appeals and reconsideration requests. However, with respect to reconsideration cases, the interim and final decisions are not accounted for separately in this report.

In 1990, for new cases, 68 interim decisions and 963 final decisions were released. In addition, there were 50 reconsideration rulings. This resulted in a total of 1,081 decisions released.

Average Case Completion Times

In 1989, the Tribunal established a average four-month completion time objective for appeals. Despite a shortage of adjudicators and a number of vacancies in the Tribunal Counsel Office (TCO), it is significant that over half of the appeals received and closed in 1990 were completed within this objective. Some of the work completed by the Tribunal in 1990 consisted of cases that had been received in previous years. This means that the Tribunal reduced some of its ageing backlog, however, it makes it difficult to evaluate the Tribunal's performance relative to the four-month turnaround objective. If one considered average completion times only for cases both received and completed in 1990, then the result would underestimate the average turnaround time. (The result would be biased by ignoring the more difficult and as yet unresolved cases.) If, on the other hand, one considered all cases closed in 1990, regardless of when they were opened, one would overestimate the turnaround time. (The result would include cases closed that had been in the ageing backlog of cases and were thus never subject to the four-month objective.)

Perhaps the best way to evaluate the Tribunal's performance in relation to the four-month turnaround objective is to examine the average times taken in 1990 for cases that entered and exited the various "stages" in the appeal process in 1990 (regardless of when they were started at the Tribunal). The sum of the average "stage" completion times therefore forms the most accurate estimate of the overall turnaround time. The results of the analysis according to the parameters suggested above are briefly as follows.

From the time an appeal arrives at the Tribunal (after all relevant documentation from WCB and from the appellant are in place), cases spent, on average, 25 days (the references to days is to calendar days) before they were assigned to a case description writer. The file then spent 48 days on average in the TCO where the pre-hearing preparation of the case occurs. It then required 43 days on average, for a scheduling date to be achieved. This reflects the time required to determine a date acceptable to the parties. Cases that went through the hearing process then required approximately 63 days before the final hearing took place. For some cases, there were additional hearings required. On average, a decision was completed 60 days after the last hearing had taken place. This time included decision writing as well as the time required for further post-hearing work after the hearing was completed.

For appeals that required this full administrative and adjudicative process, therefore, the average total time required in 1990 was approximately 239 days (just under eight months). This average clearly exceeds the four-month objective, however, it is instructive to note the length of time cases usually spend in "on hold" stages where the time is largely outside of the control of the Tribunal. For example, the average time between the scheduling of the hearing date and the hearing date is over two months, and is largely influenced by the inherent difficulties of arriving at a hearing date mutually acceptable to all parties. Furthermore, the decision processing stages often involve a need to consult with individuals in the medical community regarding new medical questions that arose at the hearing. The post-hearing process may involve a need to contact parties, obtain consents, receive advice from medical practitioners, and receive submissions from affected parties. (See Figure 9)

FIGURE 9

AVERAGE "STAGE" COMPLETION TIMES

APPEAL PROCESSING STAGE	AVERAGE DAYS
1. Preparation for TCO	25
2. Pre-hearing Work	48
3. Scheduling Activity	43
4. Awaiting Hearings	63
5. Decision Processing	60

Representation at Hearings

In approximately 40 per cent of cases heard in 1990, the employers were unrepresented. When they were represented, however, this was most often by a lawyer (20 per cent of the time), company personnel (13 per cent) or a consultant (6 per cent). The Office of the Employer Adviser was named specifically in 5 per cent of cases. "Other" and "unknown" types accounted for 7 per cent and 9 per cent of the employer representatives, respectively.

The Office of the Worker Adviser was the single most common type of worker representative, accounting for 28 per cent of hearings. The worker was unrepresented at the hearing only 20 per cent of the time. Lawyers or legal aid accounted for the representation at 20 per cent of the hearings, union officials at 14 per cent, consultants at 4 per cent and Members of Provincial Parliament at 2 per cent. "Other" and "unknown" representation accounted for 8 per cent and 5 per cent of hearings, respectively. (See Figure 10)

FIGURE 10

TRIBUNAL HEARINGS REPRESENTATION PROFILE

EMPLOYER	%	WORKER	%
No Representation	40.0	Office of Worker Adviser	28.2
Lawyer	20.0	Lawyer or legal aid/asst.	20.4
Company Personnel	13.1	No Representation	19.6
Unknown	8.6	Union	13.7
Other	7.2	Other	7.6
Consultant	5.9	Unknown	5.4
Office of Employer Adviser	5.2	Consultant	3.7
		Member of Provincial Parliament	1.5
Total	100.0	Total	100.0

FIGURE 11

STATUS OF OPEN CASES

A) INACTIVE CASES			
Cases at WCB:	180	180	
Cases at WCAT:			
Intake: Awaiting case information	94		
Pre-hearing: Awaiting hearing date	209		
Post-hearing: Awaiting resolution of interim matter	58	361	541
B) ACTIVE CASES			
Cases at WCAT:			
Pre-hearing assignment	101		
Case description writing	117		
Pre-scheduling	63		
Scheduling	124		
Post-hearing	195		
Decision writing in progress	217		
File closing	33	850	850
C) POST-DECISION ISSUES			
Ombudsman review cases	91		
Requests for reconsideration	53		
Judicial review	12	156	156

TOTAL as at December 31, 1990**1,547****Cases in Inventory**

As of December 31, 1990, the Tribunal had received 9,602 cases and had closed 8,055. This left 1,547 in the total case inventory.

It is important to note that at the end of 1990 only 850 (55 per cent) of the total cases in inventory could be considered "active". An additional 541 cases (35 per cent) were "inactive", either in temporary "on hold" stages within the Tribunal (94 at the intake stage, 209 scheduled and awaiting their hearing, and 58 awaiting a Tribunal decision on an interim matter) or in an indefinite "on hold" stage at the WCB pending their review for the chronic pain issue (180). The remaining 156 cases in inventory related to post-decision issue requests, where the Tribunal was being asked to reconsider earlier rulings (53 cases), or where there was an Ombudsman's investigation (91) or judicial review application (12) underway.

Of the 850 "active" cases, 405 (48 per cent) had not yet reached the hearing stage. Of these, 101 had not yet been assigned to lawyers or pre-hearing legal workers in TCO, 117 were active in TCO with a case description being prepared. Sixty-three had not yet been sent to scheduling, and 124 were in the process of being scheduled.

The remaining 445 (52 per cent) had moved beyond the hearing stage. Most of these, (412) were either at post-hearing work, having a decision prepared, or were recessed or adjourned. The remaining cases (33) had decisions written and released and were undergoing final file closing procedures. (See Figure 11)

FINANCIAL MATTERS

As we present this Annual Report, the Statement of Expenditure for the year ended December 31, 1990, which follows, has not yet been subject to audit. A Variance Statement also is included.

In 1990, the accounting firm of Deloitte & Touche completed a financial audit on the Tribunal's financial statements for the periods ending March 31, 1988, December 31, 1988, and December 31, 1989. The audit reports are included as Appendix B, C, and D, respectively.

FIGURE 12

STATEMENT OF EXPENDITURE - As at December 31, 1990

As at December 31, 1990 (in \$000's)

	1990 BUDGET	1990 ACTUAL
<i>Salaries and Wages</i>		
1310 Salaries & Wages - Regular	5,406.0	5,012.4
1320 Salaries & Wages - Overtime	65.0	12.4
1325 Salaries & Wages - Contract	108.0	271.3
1510 Temporary Help - Go Temp.	12.0	3.5
1520 Temporary Help - Outside Agencies	88.0	100.8
Total Salaries and Wages	5,679.0	5,400.5
<i>Employee Benefits</i>		
2110 Canada Pension Plan		65.9
2130 Unemployment Insurance		117.2
2220 Public Service Pension Fund		229.6
2260 Unfunded Liab. - PSPF		115.6
2310 Ontario Health Tax		110.0
2320 Suppl. Health & Hospital Plan		31.3
2330 Long-term Income Protection		22.7
2340 Group Life Insurance		8.6
2350 Dental Plan		31.5
2410 Workers' Compensation		0.0
2520 Maternity Supp. Benefit All.		29.2
2990 Benefits Transfer		-1.1
Total Employee Benefits	545.0	760.6

(Continues)

STATEMENT OF EXPENDITURE (CONTINUED)

As at December 31, 1990 (in \$000's)

	1990 BUDGET	1990 ACTUAL
<i>Transportation & Communication</i>		
3110 Courier/Other Delivery Charges	38.0	36.6
3111 Long Distance Charges	16.0	14.9
3112 Bell Tel. - Service, Equipment	27.0	28.6
3113 On-Line Communications	55.0	64.6
3210 Postage	33.0	18.2
3610 Travel - Accommodation & Food		58.2
3620 Travel - Air	143.0	51.0
3630 Travel - Rail		2.8
3640 Travel - Road		27.5
3660 Travel - Conferences, Seminars	25.0	20.3
3680 Travel - Attendance (Hearings)	53.0	52.4
3690 Travel - Professional/Public Outreach	6.0	0.3
3720 Travel - Other	3.0	3.1
3721 Travel - PT Vice-Chair & Reps.	42.0	45.0
Total Transportation & Communication	441.0	423.6
<i>Services</i>		
4124 External Education & Training	5.0	0.0
4130 Advertising - Employment	10.0	15.1
4210 Rentals - Computer Equipment	152.0	15.4
4220 Rentals - Office Equipment	0.0	1.0
4230 Rentals - Office Furniture	1.0	0.0
4240 Rentals - Photocopying	132.0	98.1
4260 Rentals - Office Space	960.0	953.0
4261 Rentals - Other	1.0	0.0
4270 Rentals - Hearing Rooms	28.0	28.5
4310 Data Processing Service	0.0	0.0
4320 Insurance	0.0	0.0
4340 Receptions - Hospitality	30.0	33.9
4341 Receptions - Rentals	1.0	0.2
4350 Witness Fees	28.0	17.4
4351 Process Services - Subpoenas	8.0	2.9
4360 Per Diem Allowances - PT VC & Reps.	510.0	550.1
4410 Consultants - Mgt. Services	50.0	60.8
4420 Consultant - System Development	40.0	21.6
4430 Court Reporting Services	129.0	97.4
4431 Consultants - Legal Services	40.0	15.7
4435 Transcription	176.0	146.8
4440 Med. Fee - Per Diem/Retainer/Rep.	187.0	123.9
4460 Research Services	0.0	0.0
4470 Print - Dec./Newltrs/Pamphlets	135.0	85.6
4520 Repair/Main. - Furnit./Off. Equip.	110.0	148.1
4710 Other - incl. Membership Fees	60.0	37.9
4711 Translation & Interpret. Ser.	61.0	35.3
4712 Staff Development - Course Fees	42.0	40.8
4713 French Translation Services	10.0	12.6
4714 Other French Costs	0.0	0.0
Total Services	2,906.0	2,542.9

STATEMENT OF EXPENDITURE (CONTINUED)

As at December 31, 1990 (in \$000's)

	1990 BUDGET	1990 ACTUAL
<i>Supplies & Equipment</i>		
5090 Projectors, Cameras, Screens	0.0	0.0
5110 Computer Equip. incl. Software	80.0	57.7
5120 Office Furniture & Equipment	25.0	35.4
5130 Office Machines	0.0	0.0
5710 Office Supplies	117.0	127.7
5720 Books, Publications, Reports	50.0	47.9
Total Supplies & Equipment	272.0	268.7
TOTAL OPERATING EXPENDITURES	9,843.0	9,396.3
Capital Expenditures	70.0	53.2
TOTAL EXPENDITURES	9,913.0	9,449.5

FIGURE 13**VARIANCE REPORT — 1990**

As at December 31, 1990 (in \$000's)

	1990 Budget	1990 Actual	Variance \$	%
Salaries & Wages	5,679.0	5,400.5	278.5	4.9
Employee Benefits	545.0	760.6	-215.6	-39.6
Transportation & Communication	441.0	423.6	17.4	3.9
Services	2,906.0	2,542.9	363.1	12.5
Supplies & Equipment	272.0	268.7	3.3	1.2
Total Operating Expenditures	9,843.0	9,396.3	446.7	4.5
Capital Expenditures	70.0	53.2	16.8	24.3
Total Expenditures	9,913.0	9,449.5	463.5	4.7

APPENDIX A

VICE-CHAIRS AND MEMBERS ACTIVE IN 1990

Date of First Appointment

Full-time

Chair

Ellis, S. Ronald	October 1, 1985
------------------	-----------------

Alternate Chair

Bradbury, Laura	June 1, 1988
-----------------	--------------

Vice-Chairs

Bigras, Jean Guy	May 14, 1986
Bradbury, Laura	October 1, 1985
Carlan, Nicolette	October 1, 1985
Kenny, Lila Maureen	July 29, 1987
McIntosh-Janis, Faye	May 14, 1986
Moore, John P.	July 16, 1986
Onen, Zeynep	October 1, 1988
Sandomirsky, Janice R.	July 3, 1990
Signoroni, Antonio	October 1, 1985
Starkman, David K.L.	August 1, 1988
Strachan, Ian	October 1, 1985

Members Representative of Workers

Cook, Brian	October 1, 1985
Cook, Mary	November 1, 1990
Fox, Sam	October 1, 1985
Heard, Lorne (on leave)	October 1, 1985
Lebert, Raymond J.	June 1, 1988
McCombie, Nick	October 1, 1985
Robillard, Maurice	March 11, 1987

Members Representative of Employers

Apsey, Robert	December 11, 1985
Barbeau, Pauline	January 15, 1990
Chapman, Stanley	July 16, 1990
Jago, W. Douglas	October 1, 1985
Meslin, Martin	December 11, 1985
Nipshagen, Gerry M.	October 1, 1988
Preston, Kenneth	October 1, 1985

Part-time

Vice-Chairs

Chapnik, Sandra	March 11, 1987
Faubert, Marsha	December 10, 1987
Hartman, Ruth	December 11, 1985
Lax, Joan L.	May 14, 1986
Marafioti, Victor	March 11, 1987
Marcotte, William A.	May 14, 1986
McGrath, Joy	December 10, 1987
Pfeiffer, Byron E.	March 15, 1990
Robeson, Virginia	March 15, 1990
Sperdakos, Sophia	May 14, 1986
Stewart, Susan L.	May 14, 1986

Members Representative of Workers

Acheson, Michelle	December 11, 1985
Beattie, David Bert	December 11, 1985
Drennan, George	December 11, 1985
Felice, Douglas H.	May 14, 1986
Ferrari, Mary	May 14, 1986
Fuhrman, Patti	May 14, 1986
Higson, Roy	December 11, 1985
Jackson, Faith	December 11, 1985
Klym, Peter	May 14, 1986
Rao, Fortunato	February 11, 1988

Members Representative of Employers

Clarke, Kenneth	August 1, 1989
Gabinet, Mark	December 17, 1987
Howes, Gerald	August 1, 1989
Jewell, Donna Marie	December 11, 1985
Kowalishin, A. Teresa	May 14, 1986

Ronson, John	December 11, 1985
Seguin, Jacques A.	July 1, 1986
Shuel, Robert	August 1, 1989
Sutherland, Sara	December 17, 1987

VICE-CHAIRS AND MEMBERS — RE-APPOINTMENTS

In 1990, the following full- and part-time Vice-Chairs and Members were re-appointed to the Appeals Tribunal for the terms indicated below:

Date of Re-Appointment Term (in years)

Full-time

Vice-Chairs

Bigras, Jean Guy	December 17, 1990	3
Kenny, Lila Maureen	July 29, 1990	3

Members Representative of Workers

Robillard, Maurice	March 11, 1990	3
--------------------	----------------	---

Members Representative of Employers

Jago, W. Douglas	October 1, 1990	3
Preston, Kenneth	October 1, 1990	3

Part-time

Vice-Chairs

Chapnik, Sandra	March 11, 1990	3
Faubert, Marsha	December 10, 1990	3
Marafioti, Victor	March 11, 1990	3
McGrath, Joy	December 10, 1990	3

Members Representative of Employers

Seguin, Jacques A.	January 1, 1990	2 1/2
Sutherland, Sara	December 17, 1990	3

VICE-CHAIRS AND MEMBERS — EXPIRED APPOINTMENTS AND RESIGNATIONS

The following is a list of Members who resigned or whose appointments expired during 1990.

Acheson, Michelle, Member Representative of Workers (part-time)

Carlan, Nicolette, Vice-Chair (full-time)

Fox, Sam, Member Representative of Workers (full-time)¹

Friedmann, Karl, Vice-Chair (part-time)

Gabinet, Mark, Member Representative of Employers (part-time)

Lankin, Frances, Member Representative of Workers (part-time)

Leitman, Marilyn, Vice-Chair (part-time)

Sperdakos, Sophia, Vice-Chair (part-time)

NEW APPOINTMENTS DURING 1990

Pauline Barbeau

(Full-time Employer Member) April 2, 1990

Pauline Barbeau is a Registered Nurse and Occupational Health Nurse who, from 1988-1990, was employed by the Sudbury General Hospital as its Occupational Health Nurse for a staff of approximately 1,100 employees. Her responsibilities included the management of the hospital's WCB claims. Prior to this position, Ms. Barbeau was the Nursing and Administrative Supervisor of Health Services for Laurentian University for 10 years.

Stan Chapman

(Full-time Employer Member) July 16, 1990

Stan Chapman was the Manager of Health and Safety Programs with the Regional Municipality of Halton from 1989 to 1990. From 1972 to 1989, he worked for the Regional Municipality of Waterloo, latterly as the Municipality's Regional Safety Officer, in which position he was responsible for managing the Municipality's workers' compensation claims. Mr. Chapman has a direct knowledge of the workers' compensation system at both the WCB and Appeals Tribunal levels. He was active with the WCB Municipal Users' Group and his appointment marks the first appearance of a full-time person with Schedule 2 experience within our ranks.

¹ A recommendation for a three-year appointment as a part-time Member Representative of Workers is currently being reviewed by the Minister of Labour.

Mary Cook

(Full-time Worker Member) November 14, 1990

Mary Cook has worked in library services for 22 years and has been actively involved in the labour movement throughout that time. She was the full-time President for CUPE Local 1996 at the time of her appointment to the Appeals Tribunal. Her long-time involvement with the Union, provides her with experience with the adjudicative process.

Faith Jackson

(Full-time Worker Member) November 14, 1990

In addition to Faith Jackson's participation as a part-time worker Member at the Appeals Tribunal since December 1985, she was a full-time business agent of SEIU Local 204 from 1985-1990 and she represented workers for a number of years in different forums and capacities. (Ms. Jackson is scheduled to take up her full-time appointment on January 14, 1991.)

Byron P. Pfeiffer

(Part-time Vice-Chair) March, 11, 1990

Byron Pfeiffer is an Ottawa-based sole practitioner with a full-time practice consisting primarily of immigration, criminal and civil law. Mr. Pfeiffer, who is bilingual, has a background in administrative law, including workers' compensation in a legal clinic setting, and provides us with a ready resource for our growing hearing load in the Ottawa area.

Virginia Robeson

(Part-time Vice-Chair) March 11, 1990

Virginia Robeson, has worked in various administrative capacities with the Ontario Labour Relations Board between 1980 and 1988. Since 1988, she has been a part-time mediator/labour relations officer with the Public Service Appeal Boards, and she also served as a consultant with the Pension Commission of Ontario in 1989.

Janice Sandomirsky

(Full-time Vice-Chair) July 3, 1990

Janice Sandomirsky has worked at the Tribunal since 1986, when she was hired as an Assistant Counsel to the Chair. In 1988, Janice joined the Tribunal Counsel Office as Senior Counsel, and was, for several months in 1989, the (Acting) General Counsel. Called to the bar in 1985, Janice had a year of practice in civil and family litigation with Goodman & Carr. Her background in workers' compensation pre-dates her call to the bar and includes a year as a Claims Adjudicator with the B.C. WCB and two years as a legal case worker with the Central Toronto Community Legal Clinic.

Sarah Shartal

(Full-time Worker Member) November 14, 1990

Sarah Shartal, has been active in the labour movement since 1979, when she became a labour organizer in Israel. She was the Co-ordinator of the Benefits Department at the United Food & Commercial Workers, Local 175/633 at the time of her appointment. She has been actively involved in workers' compensation advocacy since 1986 and has represented workers at both the WCB and WCAT levels. She has been one of the OFL representatives on the WCB's Bilateral Advisory Committee on the Bill 162 Regulations. (Ms. Shartal is scheduled to take up her full-time appointment on January 14, 1991.)

Brief résumés for previously appointed full- and part-time Vice-Chairs and Members are contained in the Third Report and 1989 Annual Report.

SENIOR STAFF

The following is a list of the senior staff who were employed at the Appeals Tribunal during the reporting period.

Counsel to the Tribunal Chair

Carole Trethewey

Tribunal General Counsel

Eleanor Smith

Chief Information Officer

Linda Moskovits

Chief Administration Officer

Beverley Dalton

Manager, Financial Administration

Peter Taylor

MEDICAL COUNSELLORS

The following is a list of the Tribunal's Medical Counsellors.

Dr. Douglas P. Bryce	Otolaryngology
Dr. John S. Crawford ¹	Ophthalmology
Dr. W. R. Harris	Orthopaedics (Acting)
Dr. F. H. Lowy	Psychiatry
Dr. Robert L. MacMillan	Internal Medicine
Dr. Thomas P. Morley	Neurology
Dr. John S. Speakman	Ophthalmology
Dr. Neil Watters	General Surgery

1 Dr. Crawford passed away during the reporting period and his place on our roster was assumed by Dr. Speakman.

APPENDIX B

WORKERS' COMPENSATION APPEALS TRIBUNAL

REPORT AND FINANCIAL STATEMENTS MARCH 31, 1988

Auditors' Report

To the Workers' Compensation Appeals Tribunal

We have audited the balance sheet of Workers' Compensation Appeals Tribunal as at March 31, 1988 and the statements of expenditures and Workers' Compensation Board funding for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at March 31, 1988 and the results of its operations and Workers' Compensation Board funding for the year then ended in accordance with the accounting policies described in Note 2 to the financial statements.

Deloitte & Touche
Chartered Accountants
Toronto, Ontario
February 1, 1991

BALANCE SHEET

As at March 31, 1988

ASSETS

Cash	\$ 311,000
Receivable from Workers' Compensation Board	1,444,500
Accounts receivable	<u>8,800</u>
	<u>\$1,764,300</u>

LIABILITIES

Accounts payable and accrued liabilities	\$ 364,300
Operating advance from Workers' Compensation Board	<u>1,400,000</u>
	<u>\$1,764,300</u>

Approved on Behalf of the Tribunal

S.R. Ellis, Chairman

STATEMENT OF EXPENDITURES

For the Year Ended March 31, 1988

Salaries and wages	\$4,143,600
Employee benefits	339,100
Transportation & communication	394,700
Services	2,319,600
Supplies & equipment	<u>181,900</u>
Total operating expenditures	7,378,900
Capital expenditures	<u>1,549,600</u>
Total expenditures	<u>\$8,928,500</u>

STATEMENT OF WORKERS' COMPENSATION BOARD FUNDING

For the Year Ended March 31, 1988

Recoverable expenditures	\$8,928,500
Reimbursement from WCB	<u>8,103,900</u>
Change in receivable from WCB	824,600
Receivable from WCB — beginning of year	<u>619,900</u>
Receivable from WCB — end of year	<u>\$1,444,500</u>

See accompanying notes to financial statements.

NOTES TO FINANCIAL STATEMENTS

March 31, 1988

1. General

The Tribunal was created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers from decisions, orders or rulings of the Workers' Compensation Board ("WCB"), and any matters or issues expressly conferred upon the Tribunal by the Act.

2. Significant Accounting Policies

The Tribunal's financial statements are prepared in accordance with generally accepted accounting principles except for capital expenditures which are charged to expense in the year of acquisition.

3. Commitments

The Tribunal has commitments under an operating lease requiring minimum annual lease payments as follows:

1989	\$ 780,960
1990	780,960
1991	780,960
1992	780,960
1993	780,960
1994 and thereafter	<u>2,407,960</u>
	<u>\$6,312,760</u>

APPENDIX C

WORKERS' COMPENSATION APPEALS TRIBUNAL

REPORT AND FINANCIAL STATEMENTS DECEMBER 31, 1988

Auditors' Report

To the Workers' Compensation Appeals Tribunal

We have audited the balance sheet of Workers' Compensation Appeals Tribunal as at December 31, 1988 and the statements of expenditures and Workers' Compensation Board funding for the nine month period then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at December 31, 1988 and the results of its operations and Workers' Compensation Board funding for the nine month period year then ended in accordance with the accounting policies described in Note 2 to the financial statements.

Deloitte & Touche
Chartered Accountants
Toronto, Ontario
February 1, 1991

BALANCE SHEET

As at December 31, 1988

	<u>December 31, 1988</u>	<u>March 31, 1988</u>
ASSETS		
Cash	\$ —	\$ 311,000
Receivable from Workers' Compensation Board	2,311,800	1,444,500
Accounts receivable	<u>6,100</u>	<u>8,800</u>
	<u>\$2,317,900</u>	<u>\$1,764,300</u>
LIABILITIES		
Bank indebtedness	\$ 392,900	\$ —
Accounts payable and accrued liabilities	525,000	364,300
Operating advance from Workers' Compensation Board	<u>1,400,000</u>	<u>1,400,000</u>
	<u>\$2,317,900</u>	<u>\$1,764,300</u>

Approved on Behalf of the Tribunal

S.R. Ellis, Chairman

STATEMENT OF EXPENDITURES

	<u>Nine months ended December 31, 1988</u>	<u>Twelve months ended March 31, 1988</u>
Salaries and wages	\$3,390,000	\$4,143,600
Employee benefits	343,800	339,100
Transportation & communication	264,300	394,700
Services	1,853,200	2,319,600
Supplies & equipment	<u>126,800</u>	<u>181,900</u>
Total operating expenditures	5,978,100	7,378,900
Capital expenditures	<u>307,600</u>	<u>1,549,600</u>
Total expenditures	<u>\$6,285,700</u>	<u>\$8,928,500</u>

STATEMENT OF WORKERS' COMPENSATION BOARD FUNDING

	<u>Nine months ended December 31, 1988</u>	<u>Twelve months ended March 31, 1988</u>
Recoverable expenditures	\$6,285,700	\$8,928,500
Reimbursement from WCB	5,418,400	<u>8,103,900</u>
Change in receivable from WCB	867,300	824,600
Receivable from WCB — beginning of year	<u>1,444,500</u>	<u>619,900</u>
Receivable from WCB — end of year	<u>\$2,311,800</u>	<u>\$1,444,500</u>

See accompanying notes to financial statements.

NOTES TO FINANCIAL STATEMENTS

December 31, 1988

1. General

The Tribunal was created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers from decisions, orders or rulings of the Workers' Compensation Board ("WCB"), and any matters or issues expressly conferred upon the Tribunal by the Act.

2. Significant Accounting Policies

The Tribunal's financial statements are prepared in accordance with generally accepted accounting principles, except for capital expenditures which are charged to expense in the year of acquisition.

3. Change of Fiscal Year

During 1988 the Tribunal changed its fiscal year end from March 31 to December 31 to correspond with the year end of the Workers' Compensation Board.

4. Commitments

The Tribunal has commitments under an operating lease requiring minimum annual lease payments as follows:

1989	\$ 780,960
1990	780,960
1991	780,960
1992	780,960
1993	780,960
1994 and thereafter	<u>\$1,822,240</u>
	<u>\$5,727,040</u>

APPENDIX D

WORKERS' COMPENSATION APPEALS TRIBUNAL

REPORT AND FINANCIAL STATEMENTS DECEMBER 31, 1989

Auditors' Report

To the Workers' Compensation Appeals Tribunal

We have audited the balance sheet of Workers' Compensation Appeals Tribunal as at December 31, 1989 and the statements of expenditures and Workers' Compensation Board funding for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at December 31, 1989 and the results of its operations and Workers' Compensation Board funding for the year then ended in accordance with the accounting policies described in Note 2 to the financial statements.

Deloitte & Touche
Chartered Accountants
Toronto, Ontario
February 1, 1991

BALANCE SHEET

As at December 31, 1989

	<u>1989</u>	<u>1988</u>
ASSETS		
Receivable from Workers' Compensation Board	\$2,260,400	\$2,311,800
Accounts receivable	<u>8,400</u>	<u>6,100</u>
	<u>\$2,268,800</u>	<u>\$2,317,900</u>
LIABILITIES		
Bank indebtedness	\$318,400	\$392,900
Accounts payable and accrued liabilities	550,400	525,000
Operating advance from Workers' Compensation Board	<u>1,400,000</u>	<u>1,400,000</u>
	<u>\$2,268,800</u>	<u>\$2,317,900</u>

Approved on Behalf of the Tribunal

S.R. Ellis, Chairman

STATEMENT OF EXPENDITURES

	<u>Twelve months ended December 31, 1989</u>	<u>Nine months ended December 31, 1988</u>
Salaries and wages	\$4,656,300	\$3,390,000
Employee benefits	447,800	343,800
Transportation & communication	417,300	264,300
Services	2,633,900	1,853,200
Supplies & equipment	<u>193,600</u>	<u>126,800</u>
Total operating expenditures	8,348,900	5,978,100
Capital expenditures	<u>148,500</u>	<u>307,600</u>
Total expenditures	<u>\$8,497,400</u>	<u>\$6,285,700</u>

STATEMENT OF WORKERS' COMPENSATION BOARD FUNDING

	<u>Twelve months ended December 31, 1989</u>	<u>Nine months ended December 31, 1988</u>
Recoverable expenditures	\$8,497,400	\$6,285,700
Reimbursement from WCB	8,548,800	5,418,400
Change in receivable from WCB	(51,400)	867,300
Receivable from WCB — beginning of year	2,311,800	1,444,500
Receivable from WCB — end of year	<u>\$2,260,400</u>	<u>\$2,311,800</u>

See accompanying notes to financial statements.

NOTES TO FINANCIAL STATEMENTS

December 31, 1989

1. General

The Tribunal was created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers from decisions, orders or rulings of the Workers' Compensation Board ("WCB"), and any matters or issues expressly conferred upon the Tribunal by the Act.

2. Significant Accounting Policies

The Tribunal's financial statements are prepared in accordance with generally accepted accounting principles except for capital expenditures which are charged to expense in the year of acquisition.

3. Comparative figures

During 1988 the Tribunal changed its fiscal year end from March 31 to December 31 to correspond with the year end of the Workers' Compensation Board.

4. Commitments

The Tribunal has commitments under an operating lease requiring minimum annual lease payments as follows:

1990	\$ 780,960
1991	780,960
1992	780,960
1993	780,960
1994	780,960
1995 and thereafter	<u>\$1,041,280</u>
	<u>\$4,946,080</u>

NOTES COMPLÉMENTAIRES
31 décembre 1989

1. Généralités

Le Tribunal a été créé par la loi de 1984 modifiant la Loi sur les accidents du travail, chapitre 58 - section 32, qui est entrée en vigueur le 1^{er} octobre 1985.

Le Tribunal a pour mandat d'entendre, d'évaluer et de régler d'une manière juste, impartiale et indépendante, les appels des travailleurs et employeurs des décisions ou ordonnances de la Commission des accidents du travail ("CAT"), et toute question ou affaire expressément soumise au Tribunal en vertu de la Loi.

2. Principales conventions comptables

Les états financiers du Tribunal sont dressés selon les principes comptables généralement reconnus exception faite des dépenses en immobilisations qui sont portées dans les dépenses de l'exercice où elles ont été effectuées.

3. Chiffres correspondants

Au cours de 1988, le Tribunal a changé la fin de son exercice, la portant du 31 mars au 31 décembre, afin qu'elle corresponde à celle de la Commission des accidents du travail.

4. Engagements

Le Tribunal a des engagements en vertu d'un contrat de location-exploitation dont les loyers minimaux annuels exigibles s'établissent comme suit:

1990	780 960 \$
1991	780 960
1992	780 960
1993	780 960
1994	780 960
1995 et par la suite	1 041 280 \$
	<u>4 946 080 \$</u>

BILAN
au 31 décembre 1989

1989		1988	
ACTIF			
Somme à recevoir de la Commission des accidents du travail	2 260 400 \$	2 311 800 \$	
Débiteurs	8 400	6 100	
	<u>2 268 800 \$</u>	<u>2 317 900 \$</u>	
PASSIF			
Dette bancaire	318 400 \$	392 900	
Créditeurs et charges à payer	550 400	525 000	
Avance d'exploitation de la Commission des accidents du travail	1 400 000	1 400 000	
	<u>2 268 800 \$</u>	<u>2 317 900 \$</u>	
Approuvé au nom du Tribunal,			
S.R. Ellis, président			

ÉTAT DES DÉPENSES

Douze mois terminés le 31 décembre 1989		Neuf mois terminés le 31 décembre 1988	
Salaires et traitements	4 656 300 \$	3 390 000 \$	
Avantages sociaux des employés	447 800	343 800	
Transport et communications	417 300	264 300	
Services	2 633 900	1 853 200	
Fournitures et matériel	193 600	126 800	
Total des dépenses d'exploitation	8 348 900	5 978 100	
Dépenses en immobilisations	148 500	307 600	
Total des dépenses	<u>8 497 400 \$</u>	<u>6 285 700 \$</u>	

ÉTAT DU FINANCEMENT DE LA COMMISSION
DES ACCIDENTS DU TRAVAIL

Douze mois terminés le 31 décembre 1989		Neuf mois terminés le 31 décembre 1988	
Dépenses récupérables	8 497 400 \$	6 285 700 \$	
Remboursement de la CAT	8 548 800	5 418 400	
Variation dans la somme à recevoir de la CAT	(51 400)	867 300	
Somme à recevoir de la CAT	<u>2 311 800</u>	<u>1 444 500</u>	
— au début de l'exercice			
Somme à recevoir de la CAT	<u>2 260 400 \$</u>	<u>2 311 800 \$</u>	
— à la fin de l'exercice			

Voir les notes complémentaires

ANNEXE D

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

RAPPORT ET ÉTATS FINANCIERS 31 DÉCEMBRE 1989

Rapport des vérificateurs

Au Tribunal d'appel des accidents du travail

Nous avons vérifié le bilan du Tribunal d'appel des accidents du travail au 31 décembre 1989 et les états des dépenses et du financement de la Commission des accidents du travail de l'exercice terminé à cette date. La responsabilité de ces états financiers incombe à la direction du Tribunal. Notre responsabilité consiste à exprimer une opinion sur ces états financiers en nous fondant sur notre vérification.

Notre vérification a été effectuée conformément aux normes de vérification généralement reconnues. Ces normes exigent que la vérification soit planifiée et exécutée de manière à fournir un degré raisonnable de certitude quant à l'absence d'inexactitudes importantes dans les états financiers. La vérification comprend le contrôle par sondages des informations probantes à l'appui des montants et des autres éléments d'information fournis dans les états financiers. Elle comprend également l'évaluation des principes comptables suivis et des estimations importantes faites par la direction, ainsi qu'une appréciation de la présentation d'ensemble des états financiers.

À notre avis, ces états financiers présentent fidèlement, à tous égards importants, la situation financière du Tribunal au 31 décembre 1989, ainsi que les résultats de son exploitation et le financement de la Commission des accidents du travail pour l'exercice terminé à cette date selon les conventions comptables décrites dans la note 2 des états financiers.

Deloitte & Touche
Comptables agréés
Toronto (Ontario)
le 1^{er} février 1991

NOTES COMPLÉMENTAIRES
31 décembre 1988

1. Généralités

Le Tribunal a été créé par la loi de 1984 modifiant la Loi sur les accidents du travail, chapitre 58 - section 32, qui est entrée en vigueur le 1^{er} octobre 1985.

Le Tribunal a pour mandat d'entendre, d'évaluer et de régler d'une manière juste, impartiale et indépendante, les appels des travailleurs et employeurs des décisions ou ordonnances de la Commission des accidents du travail ("CAT"), et toute question ou affaire expressément soumise au Tribunal en vertu de la Loi.

2. Principales conventions comptables

Les états financiers du Tribunal sont dressés selon les principes comptables généralement reconnus exception faite des dépenses en immobilisations qui sont portées dans les dépenses de l'exercice où elles ont été effectuées.

3. Chiffres correspondants

Au cours de 1988, le Tribunal a changé la fin de son exercice, la portant du 31 mars au 31 décembre, afin qu'elle corresponde à celle de la Commission des accidents du travail.

4. Engagements

Le Tribunal a des engagements en vertu d'un contrat de location-exploitation dont les loyers minimaux annuels exigibles s'établissent comme suit:

1989	780 960 \$
1990	780 960
1991	780 960
1992	780 960
1993	780 960
1994 et par la suite	1 822 240 \$
	5 727 040 \$

BILAN
au 31 décembre 1988

	31 décembre 1988	31 mars 1988
ACTIF		
Encaisse	—	311 000 \$
Somme à recevoir de la Commission	2 311 800	1 444 500
des accidents du travail	6 100	8 800
Débiteurs	2 317 900 \$	1 764 300 \$
PASSIF		
Dettes bancaires	392 900 \$	—
Créditeurs et charges à payer	525 000	364 300
Avance d'exploitation de la Commission	1 400 000	1 400 000
des accidents du travail	2 317 900 \$	1 764 300 \$
Approuvé au nom du Tribunal,		
S.R. Ellis, président		
ÉTAT DES DÉPENSES		
	Neuf mois terminés le 31 décembre 1988	Douze mois terminés le 31 mars 1988
Salaires et traitements	3 390 000 \$	4 143 600 \$
Avantages sociaux des employés	343 800	339 100
Transport et communications	264 300	394 700
Services	1 853 200	2 319 600
Fournitures et matériel	126 800	181 900
Total des dépenses d'exploitation	5 978 100	7 378 900
Dépenses en immobilisations	307 600	1 549 600
Total des dépenses	6 285 700 \$	8 928 500 \$
ÉTAT DU FINANCEMENT DE LA COMMISSION		
DES ACCIDENTS DU TRAVAIL		
	Neuf mois terminés le 31 décembre 1988	Douze mois terminés le 31 mars 1988
Dépenses récupérables	6 285 700 \$	8 928 500 \$
Remboursement de la CAT	5 418 400	8 103 900
Variation dans la somme à recevoir de la CAT	867 300	824 600
Somme à recevoir de la CAT	1 444 500	619 900
— au début de l'exercice		
Somme à recevoir de la CAT	2 311 800 \$	1 444 500 \$
— à la fin de l'exercice		

Voir les notes complémentaires

ANNEXE C

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

RAPPORT ET ÉTATS FINANCIERS 31 DÉCEMBRE 1988

Rapport des vérificateurs

Au Tribunal d'appel des accidents du travail

Nous avons vérifié le bilan du Tribunal d'appel des accidents du travail au 31 décembre 1988 et les états des dépenses et du financement de la Commission des accidents du travail de la période de neuf mois terminée à cette date. La responsabilité de ces états financiers incombe à la direction du Tribunal. Notre responsabilité consiste à exprimer une opinion sur ces états financiers en nous fondant sur notre vérification. Notre vérification a été effectuée conformément aux normes de vérification généralement reconnues. Ces normes exigent que la vérification soit planifiée et exécutée de manière à fournir un degré raisonnable de certitude quant à l'absence d'inexactitudes importantes dans les états financiers. La vérification comprend le contrôle par sondages des informations probantes à l'appui des montants et des autres éléments d'information fournis dans les états financiers. Elle comprend également l'évaluation des principes comptables suivis et des estimations importantes faites par la direction, ainsi qu'une appréciation de la présentation d'ensemble des états financiers.

À notre avis, ces états financiers présentent fidèlement, à tous égards importants, la situation financière du Tribunal au 31 décembre 1988, ainsi que les résultats de son exploitation et le financement de la Commission des accidents du travail pour la période de neuf mois terminée à cette date selon les conventions comptables décrites dans la note 2 des états financiers.

Deloitte & Touche
Comptables agréés
Toronto (Ontario)
le 1^{er} février 1991

NOTES COMPLÉMENTAIRES
31 mars 1988

1. Généralités

Le Tribunal a été créé par la loi de 1984 modifiant la Loi sur les accidents du travail, chapitre 58 - section 32, qui est entrée en vigueur le 1^{er} octobre 1985.

Le Tribunal a pour mandat d'entendre, d'évaluer et de régler d'une manière juste, impartiale et indépendante, les appels des travailleurs et employeurs des décisions ou ordonnances de la Commission des accidents du travail ("CAT"), et toute question ou affaire expressément soumise au Tribunal en vertu de la Loi.

2. Principales conventions comptables

Les états financiers du Tribunal sont dressés selon les principes comptables généralement reconnus exception faite des dépenses en immobilisations qui sont portées dans les dépenses de l'exercice où elles ont été effectuées.

3. Engagements

Le Tribunal a des engagements en vertu d'un contrat de location-exploitation dont les loyers minimaux annuels exigibles s'établissent comme suit:

1989	780 960 \$
1990	780 960
1991	780 960
1992	780 960
1993	780 960
1994 et par la suite	2 407 960 \$
	<u>6 312 760 \$</u>

BILAN
au 31 mars 1988

ACTIF	
Encaisse	311 000 \$
Somme à recevoir de la Commission des accidents du travail	1 444 500
Débiteurs	8 800
	<u>1 764 300 \$</u>
PASSIF	
Créditeurs et charges à payer	364 300 \$
Avance d'exploitation de la Commission des accidents du travail	1 400 000
	<u>1 764 300 \$</u>

Approuvé au nom du Tribunal,
S. R. Ellis, président

ÉTAT DES DÉPENSES
de l'exercice terminé le 31 mars 1988

Salaires et traitements	4 143 600 \$
Avantages sociaux des employés	339 100
Transport et communications	394 700
Services	2 319 600
Fournitures et matériel	181 900
Total des dépenses d'exploitation	<u>7 378 900</u>
Dépenses en immobilisations	1 549 600
Total des dépenses	<u>8 928 500 \$</u>

ÉTAT DU FINANCEMENT DE LA COMMISSION
DES ACCIDENTS DU TRAVAIL
de l'exercice terminé le 31 mars 1988

Dépenses récupérables	8 928 500 \$
Remboursement de la CAT	8 103 900
Variation dans la somme à recevoir de la CAT	824 600
Somme à recevoir de la CAT	<u>619 900</u>
— au début de l'exercice	
Somme à recevoir de la CAT	<u>1 444 500 \$</u>
— à la fin de l'exercice	

Voir les notes complémentaires

ANNEXE B

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

RAPPORT ET ÉTATS FINANCIERS 31 MARS 1988

Rapport des vérificateurs

Au Tribunal d'appel des accidents du travail

Nous avons vérifié le bilan du Tribunal d'appel des accidents du travail au 31 mars 1988 et les états des dépenses et du financement de la Commission des accidents du travail de l'exercice terminé à cette date. La responsabilité de ces états financiers incombe à la direction du Tribunal. Notre responsabilité consiste à exprimer une opinion sur ces états financiers en nous fondant sur notre vérification.

Notre vérification a été effectuée conformément aux normes de vérification généralement reconnues. Ces normes exigent que la vérification soit planifiée et exécutée de manière à fournir un degré raisonnable de certitude quant à l'absence d'inexactitudes importantes dans les états financiers. La vérification comprend le contrôle par sondages des informations probantes à l'appui des montants et des autres éléments d'information fournis dans les états financiers. Elle comprend également l'évaluation des principes comptables suivis et des estimations importantes faites par la direction, ainsi qu'une appréciation de la présentation d'ensemble des états financiers.

À notre avis, ces états financiers présentent fidèlement, à tous égards importants, la situation financière du Tribunal au 31 mars 1988, ainsi que les résultats de son exploitation et le financement de la Commission des accidents du travail pour l'exercice terminé à cette date selon les conventions comptables décrites dans la note 2 des états financiers.

Deloitte & Touche
Comptables agréés
Toronto (Ontario)
le 1^{er} février 1991

CONSEILLERS MÉDICAUX

Suit une liste des conseillers médicaux du Tribunal.

D ^r Douglas R. Bryce	Otolaryngologie
D ^r John S. Crawford ¹	Ophthalmologie
D ^r W.R. Harris	Orthopédie (intérimaire)
D ^r F. H. Lowy	Psychiatrie
D ^r Robert L. MacMillan	Médecine interne
D ^r Thomas P. Morley	Neurologie
D ^r John S. Speakman	Ophthalmologie
D ^r Neil Watters	Chirurgie

¹ Le D^r Crawford est décédé en 1990. C'est le D^r Speakman qui remplit ses fonctions.

Janice Sandomirsky

(Vice-présidente à plein temps) 3 juillet 1990

Janice Sandomirsky s'était jointe au Tribunal en 1986 à titre de conseillère adjointe du président. En 1988, Janice était passée au Bureau des conseillers juridiques du Tribunal où elle était devenue avocate principale, pour ensuite assumer les fonctions d'avocate générale intermédiaire pendant plusieurs mois en 1989. Janice avait été reçue au barreau en 1985, après quoi elle avait pratiqué le droit de la famille et le droit civil pour le cabinet Goodman & Carr pendant un an. Elle possédait de l'expérience dans le domaine des accidents du travail avant même d'être reçue au barreau car elle avait travaillé un an comme agent d'indemnisation auprès de la commission des accidents du travail de la Colombie-Britannique et pendant deux ans à la Central Toronto Community Legal Clinic.

Sarah Shartal

(Membre à plein temps représentant les travailleurs) 14 novembre 1990

Sarah Shartal est engagée dans le mouvement ouvrier depuis 1979, année au cours de laquelle elle était devenue organisatrice syndicale en Israël. Au moment de sa nomination, elle était coordonnatrice du service d'indemnisation de la section locale 175/633 du Syndicat international des travailleurs unis de l'alimentation et du commerce. Elle a agi à titre d'intervenante dans le domaine des accidents du travail depuis 1986 et a représenté les travailleurs à la Commission et au Tribunal d'appel. Elle a siégé au comité consultatif bilatéral de la Commission sur les règlements relatifs à la Loi 162 à titre de représentante de la FTO. (Mme Shartal doit entrer en fonction le 14 janvier 1990.)

Le lecteur trouvera un sommaire du curriculum vitae des vice-présidents et des membres à plein temps et à temps partiel nommés antérieurement dans le *Troisième rapport* et le *Rapport annuel 1989*.

PERSONNEL CADRE

Suit une liste du personnel cadre du Tribunal en fonction en 1990:

Conseillère juridique du président

Carole Trethewey

Avocate générale du Tribunal

Eleanor Smith

Chef de l'information

Linda Moskovits

Chef de l'administration

Beverley Dalton

Chef des finances

Peter Taylor

Mary Cook

(Membre à plein temps représentant les travailleurs) 14 novembre 1990

Mary Cook a été engagée dans le mouvement ouvrier pendant les 22 années au cours desquelles elle a travaillé dans le secteur des services, plus précisément en bibliothèque. Au moment de sa nomination, elle était présidente à plein temps de la section locale 1996 du Syndicat canadien de la Fonction publique (SCFP). Sa participation de longue date dans le monde syndical lui a permis d'acquérir de l'expérience dans le domaine de l'indemnisation.

Faith Jackson

(Membre à plein temps représentant les travailleurs) 14 novembre 1990

En plus d'assumer les fonctions de membre à temps partiel représentant les travailleurs au Tribunal d'appel depuis décembre 1985, Faith Jackson était agent syndical à plein temps de la section locale 204 de l'Union internationale des employés de services (UIES) de 1985 à 1990. Elle a représenté les travailleurs à divers titres pendant de nombreuses années, et ce, à un large éventail d'événements. (Mme Jackson doit entrer en fonction à plein temps le 14 janvier 1991.)

Byron P. Pfeiffer

(Vice-président à temps partiel) 11 mars 1990

Byron Pfeiffer, avocat, pratique à son compte surtout dans les domaines de l'immigration, du droit criminel et du droit civil. Me Pfeiffer, qui est bilingue, possède de l'expérience en droit administratif, y compris dans le domaine des accidents du travail, expérience qu'il a acquise en clinique d'aide juridique. La nomination de Me Pfeiffer assure le Tribunal d'une présence dans la région d'Ottawa, où le nombre d'audiences va en augmentant.

Virginia Robeson

(Vice-présidente à temps partiel) 11 mars 1990

De 1980 à 1988, Virginia Robeson a assumé diverses responsabilités administratives à la Commission des relations de travail de l'Ontario. Depuis 1988, elle est médiatrice et agent de relations de travail à temps partiel auprès des commissions d'appel de la fonction publique. Enfin, elle a agi à titre de conseillère auprès de la Commission des régimes de retraite de l'Ontario en 1989.

VICE-PRÉSIDENTS ET MEMBRES — EXPIRATIONS DE MANDATS ET DÉMISSIONS

Suit une liste des membres qui ont démissionné ou dont le mandat a expiré en 1990.

Acheson, Michelle, membre représentant les travailleurs (temps partiel)

Carlton, Nicolette, vice-présidente (plein temps)

Fox, Sam, membre représentant les travailleurs (plein temps)¹

Friedmann, Karl, vice-président (temps partiel)

Gabriel, Mark, membre représentant les employés (temps partiel)

Larkin, Frances, membre représentant les travailleurs (temps partiel)

Leitman, Marilyn, vice-présidente (temps partiel)

Sperdakos, Sophia, vice-présidente (temps partiel)

NOMINATIONS EN 1990

Pauline Barbeau

(Membre à plein temps représentant les employés) 2 avril 1990

Pauline Barbeau est une infirmière licenciée qui détient un diplôme de spécialisation en santé du travail. Elle avait travaillé de 1988 à 1990 à l'hôpital général de Sudbury où elle assumait les fonctions d'infirmière du travail pour un personnel comptant environ 1 100 employés. Elle était entre autres chargée d'administrer les dossiers de l'hôpital relevant de la Commission des accidents du travail. Avant d'occuper ce poste, elle avait travaillé pendant dix ans à l'Université Laurentienne comme superviseuse des soins infirmiers et de l'administration des services de santé.

Stan Chapman

(Membre à plein temps représentant les employés) 16 juillet 1990

Stan Chapman avait été directeur des programmes de santé et de sécurité de la municipalité régionale d'Halton de 1989 à 1990. De 1972 à 1989, il avait été au service de la municipalité régionale de Waterloo où, pendant les derniers temps, il administrait les dossiers d'accidents du travail à titre d'agent de sécurité régional de la municipalité. M. Chapman possède de l'expérience autant auprès de la Commission des accidents du travail que du Tribunal d'appel. Il faisait partie du WCB Municipal Users' Group, et il est la première personne possédant de l'expérience auprès des employés de l'annexe 2 à être nommée pour occuper un poste à plein temps au Tribunal.

¹ Le ministre du Travail examine présentement une recommandation en vue de la nomination de M. Fox à un poste de membre à temps partiel représentant les travailleurs.

VICE-PRÉSIDENTS ET MEMBRES —
RENOUVELLEMENTS DE MANDATS

En 1990, les vice-présidents et les membres énumérés ci-après ont obtenu le renouvellement de leur mandat pour la période indiquée.

RenouvellementMandat

Plein temps

Vice-présidents	Bigras, Jean Guy	17 décembre 1990	3 ans
	Kenny, Lila Maureen	29 juillet 1990	3 ans
Membres représentant les travailleurs			
	Robillard, Maurice	11 mars 1990	3 ans

Membres représentant les employeurs			
	Jago, W. Douglas	1 ^{er} octobre 1990	3 ans
	Preston, Kenneth	1 ^{er} octobre 1990	3 ans

Temps partiel

Vice-présidents			
	Chapnik, Sandra	11 mars 1990	3 ans
	Faubert, Marsha	10 décembre 1990	3 ans
	Marafioti, Victor	11 mars 1990	3 ans
	McGrath, Joy	10 décembre 1990	3 ans

Membres représentant les employeurs			
	Séguin, Jacques A.	1 ^{er} janvier 1990	2 ans 1/2
	Sutherland, Sara	17 décembre 1990	3 ans

Temps partiel

Membres représentant les employeurs	
Apsey, Robert	11 décembre 1985
Barbeau, Pauline	15 janvier 1990
Chapman, Stanley	16 juillet 1990
Jago, W. Douglas	1 ^{er} octobre 1985
Meslin, Martin	11 décembre 1985
Nipshagen, Gerry M.	1 ^{er} octobre 1988
Preston, Kenneth	1 ^{er} octobre 1985

Vice-présidents

Chapnik, Sandra	11 mars 1987
Faubert, Marsha	10 décembre 1987
Hartman, Ruth	11 décembre 1985
Lax, Joan L.	14 mai 1986
Marafioti, Victor	11 mars 1987
Marcorre, William A.	14 mai 1986
McGrath, Joy	10 décembre 1987
Pfeiffer, Byron E.	15 mars 1990
Robeson, Virginia	15 mars 1990
Sperdakos, Sophia	14 mai 1986
Stewart, Susan L.	14 mai 1986

Membres représentant les travailleurs

Acheson, Michelle	11 décembre 1985
Beattie, David Bert	11 décembre 1985
Drennan, George	11 décembre 1985
Felice, Douglas H.	14 mai 1986
Ferrari, Mary	14 mai 1986
Fuhrman, Pati	14 mai 1986
Higson, Roy	11 décembre 1985
Jackson, Faith	11 décembre 1985
Klym, Peter	14 mai 1986
Rao, Fortunato	11 février 1988

Membres représentant les employeurs

Clarke, Kenneth	1 ^{er} août 1989
Gabiner, Mark	17 décembre 1987
Howes, Gerald	1 ^{er} août 1989
Jewell, Donna Marie	11 décembre 1985
Kowalishin, A. Teresa	14 mai 1986

ANNEXE A

VICE-PRÉSIDENTS ET MEMBRES EN FONCTION EN 1990

Première nomination

Plein temps

Président
Ellis, S. Ronald
1^{er} octobre 1985

Présidente suppléante
Bradbury, Laura
1^{er} juin 1988

Vice-présidents

Bigras, Jean Guy
14 mai 1986

Bradbury, Laura
1^{er} octobre 1985

Carlan, Nicolette
1^{er} octobre 1985

Kenny, Lila Maureen
29 juillet 1987

McIntosh-Janis, Faye
14 mai 1986

Moore, John P.
16 juillet 1986

O'neen, Zeynep
1^{er} octobre 1988

Sandomirsky, Janice R.
3 juillet 1990

Signoroni, Antonio
1^{er} octobre 1985

Starkman, David K.L.
1^{er} août 1988

Strachan, Ian
1^{er} octobre 1985

Membres représentant les travailleurs

Cook, Brian
1^{er} octobre 1985

Cook, Mary
1^{er} novembre 1990

Fox, Sam
1^{er} octobre 1985

Heard, Lorne (congé autorisé)
1^{er} octobre 1985

Lebert, Raymond J.
1^{er} juin 1988

McCombie, Nick
1^{er} octobre 1985

Robillard, Maurice
11 mars 1987

TABEAU 13

ANALYSE DES ECARTS — 1990

Au 31 décembre 1990 (en milliers de \$)

	Budget de 1990	Dépenses engagées	\$	Ecart %
Salaires et traitements	5 679,0	5 400,5	278,5	4,9
Avantages sociaux	545,0	760,6	-215,6	-39,6
Transports et communications	441,0	423,6	17,4	3,9
Services	2 906,0	2 542,9	363,1	12,5
Fournitures et matériel	272,0	268,7	3,3	1,2
Total (dépenses de fonctionnement)	9 843,0	9 396,3	446,7	4,5
Dépenses en immobilisations	70,0	53,2	16,8	24,3
Total (dépenses engagées)	9 913,0	9 449,5	463,5	4,7

Au 31 décembre 1990 (en milliers de \$)			
BUDGET	DE 1990	DÉPENSES	ENGAGÉES
<hr/>			
4270 Location - autres	1,0	0,0	0,0
4310 Services de traitement de données	0,0	0,0	0,0
4320 Assurances	0,0	0,0	0,0
4340 Réceptions - hospitalité	30,0	33,9	0,2
4341 Réceptions - location	1,0	0,2	0,0
4350 Indemnités de témoins	28,0	17,4	0,0
4351 Signification des brevets et assignations	8,0	2,9	0,0
4360 Indemnités journalières - vice-prés. et membres à temps partiel	510,0	550,1	0,0
4410 Experts-conseils - services de gestion	50,0	60,8	0,0
4420 Experts-conseils - conception de systèmes	40,0	21,6	0,0
4430 Services de sténographie judiciaire	129,0	97,4	0,0
4431 Experts-conseils - services juridiques	40,0	15,7	0,0
4435 Transcription	176,0	146,8	0,0
4440 Frais médicaux - indemnités journalières, acomptes	187,0	123,9	0,0
4460 Services de recherche	0,0	0,0	0,0
4470 Impression - décisions, bulletins, brochures	135,0	85,6	0,0
4520 Répar. et entretien - mobilier, matériel de bureau	110,0	148,1	0,0
4710 Autres - y compris droits d'adhésion	60,0	37,9	0,0
4711 Services de traduction et d'interprétation	61,0	35,3	0,0
4712 Perfectionnement professionnel - droits de scolarité	42,0	40,8	0,0
4713 Services de traduction en français	10,0	12,6	0,0
4714 Autres dépenses reliées aux services en français	0,0	0,0	0,0
<hr/>			
Total (services)	2 906,0	2 542,9	
<hr/>			
Fournitures et matériel			
5090 Projecteurs, caméras et écrans	0,0	0,0	0,0
5110 Matériel informatique et logiciel	80,0	57,7	0,0
5120 Mobilier et matériel de bureau	25,0	35,4	0,0
5130 Machines de bureau	0,0	0,0	0,0
5710 Fournitures de bureau	117,0	127,7	0,0
5720 Livres, publications et rapports	50,0	47,9	0,0
<hr/>			
Total (fournitures et matériel)	272,0	268,7	
TOTAL (dépenses de fonctionnement)	9 843,0	9 396,3	
Dépenses en immobilisations	70,0	53,2	
TOTAL (dépenses)	9 913,0	9 449,5	

TABLEAU 12

ÉTAT DES DÉPENSES AU 31 DÉCEMBRE 1990

Au 31 décembre 1990 (en milliers de \$)

Salaires et traitements		Transports et communications		Avantages sociaux des employés		Total (salaires et traitements)	
1310 Salaires et traitements - heures normales	1310	3110 Services de messagerie et de livraison	3110	2110 Régime de pensions du Canada	2110	Total (salaires et traitements)	
1320 Salaires et traitements - temps supplémentaire	1320	3111 Interurbains	16,0	2130 Assurance-chômage	2130	5 406,0	5 679,0
1325 Salaires et traitements - contractuels	1325	3112 Bell - services et matériel	27,0	2220 Caisse de retraite des fonctionnaires	2220	117,2	
1510 Aide temporaire - empl. temp. du gouv.	1510	3113 Communications en ligne	55,0	2260 Fonds de rajustement - caisse de retraite des fonctionnaires	2260	229,6	
1520 Aide temporaire - agences de placement	1520	3210 Affranchissement du courrier	33,0	2310 Régime d'assurance-maladie de l'Ontario	2310	115,6	
		3610 Déplacements - hébergement et repas	58,2	2320 Régime compl. - assurance-maladie et assurance-hospitalisation	2320	110,0	
		3620 Transport aérien	51,0	2330 Régime de protection du revenu	2330	31,3	
		3630 Transport ferroviaire	2,8	2340 Assurance-vie collective	2340	22,7	
		3640 Transport routier	27,5	2350 Assurance dentaire	2350	31,5	
		3660 Déplacements - conférences, séminaires	25,0	2410 Accidents du travail	2410	0,0	
		3680 Déplacements - participation aux audiences	53,0	2520 Prestations supplémentaires de maternité	2520	29,2	
		3690 Déplacements - professionnels/rayonnement	6,0	2990 Transfert d'avantages sociaux	2990	-1,1	
		3720 Déplacements - autres	3,0				
		3721 Déplacements - vice-prés. et membres à temps partiel	42,0				
			</				

TABLEAU 11

ETAT D'AVANCEMENT DU TRAITEMENT DES DOSSIERS EN INVENTAIRE

TOTAL au 31 décembre 1990				1 547
A) DOSSIERS INACTIFS				
Dossiers à la CAT:				
Dossier au TAAT:	180	180		
Réception: En attente de renseignements	94			
Stade préalable à l'audition:				
En attente d'une date d'audition	209			
Stade préalable à l'audition:				
En attente du règlement d'une question préliminaire	58	361	541	
B) DOSSIERS ACTIFS				
Dossiers au TAAT:				
Travaux préparatoires à l'audition	101			
Rédaction de descriptions de cas	117			
Travaux préalables à l'inscription au calendrier des audiences	63			
Travaux postérieurs à l'audition	124			
Rédaction de décisions	217			
Fermeture des dossiers	33	850	850	
C) DEMANDES ULTÉRIEURES À DES DÉCISIONS				
Demandes de l'ombudsman	91			
Demandes de réexamen	53	156	156	
Demandes de révision judiciaire	12			
TOTAL				
				1 547

Des 850 "dossiers actifs", 405 (48 pour cent) n'avaient pas encore atteint l'étape de l'audition. De ces dossiers, 101 n'avaient pas encore été confiés à des avocats ou à des travailleurs juridiques du BCJT. Des descriptions de cas étaient en cours de rédaction pour 117 dossiers. Enfin, 63 cas n'avaient pas encore été inscrits au calendrier des audiences, et le service d'inscription des cas tentait de fixer les dates d'audition de 124 cas.

Les autres 445 dossiers (52 pour cent) avaient passé l'étape de l'audition. La plupart de ces dossiers (412) faisaient l'objet d'enquêtes supplémentaires, étaient à l'étape de la rédaction d'une décision ou avaient été ajoutés. Des décisions avaient été rendues à l'égard des 33 cas restants, et les dossiers étaient en cours de fermeture. (Se reporter au tableau 11)

QUESTIONS FINANCIÈRES

Au moment de publier le présent rapport, l'état des dépenses au 31 décembre 1990 n'avait pas encore été soumis aux vérificateurs. Une analyse des écarts est incluse.

En 1990, la cabinet comptable Deloitte & Touche a vérifié les états financiers du Tribunal pour les périodes terminées le 31 mars 1988, le 31 décembre 1988 et le 31 décembre 1989. Les rapports de vérification forment respectivement les annexes B, C et D du présent rapport.

TABEAU 10

PROFIL DE LA REPRÉSENTATION LORS DES AUDIENCES

EMPLOYEUR	%	TRAVAILLEUR	%
Sans représentant	40,0	Bureau des conseillers des travailleurs	28,2
Avocat	20,0	Avocat ou aide juridique	20,4
Personnel d'entreprise	13,1	Sans représentant	19,6
Inconnu	8,6	Syndicat	13,7
Autre	7,2	Autre	7,6
Expert-conseil	5,9	Inconnu	5,4
Bureau des conseillers du patronat	5,2	Expert-conseil	3,7
		Député provincial	1,5
Total	100,0	Total	100,0

Représentation lors des audiences

Au chapitre de la représentation lors des audiences, les statistiques révèlent que les employeurs ne se sont pas fait représenter dans environ 40 pour cent des cas. Par contre, lorsqu'ils étaient représentés, c'était le plus souvent par des avocats (20 pour cent des cas). Ils se sont fait représenter par du personnel d'entreprise dans 13 pour cent des cas et par des experts-conseils dans 6 pour cent des cas. Ils ont nommé spécifiquement le Bureau des conseillers du patronat dans cinq pour cent des cas et ont opté pour un autre mode de représentation dans sept pour cent des cas. Il n'existe pas de données sur le mode de représentation de l'employeur dans neuf pour cent des cas.

En ce qui concerne les travailleurs, ils ne se sont pas fait représenter dans seulement 20 pour cent des cas. Lorsqu'ils étaient représentés, c'était le plus souvent par le Bureau des conseillers des travailleurs (28 pour cent des cas). Ils se sont fait représenter par des avocats ou des travailleurs de l'aide juridique dans 20 pour cent des cas, par des représentants syndicaux dans 14 pour cent des cas, par des experts-conseils dans quatre pour cent des cas et par des députés provinciaux dans deux pour cent des cas. Ils ont opté pour un autre mode de représentation dans huit pour cent des cas. Il n'existe pas de données sur le mode de représentation des travailleurs dans cinq pour cent des cas. (Se reporter au tableau 10)

Dossiers en inventaire

Au 31 décembre 1990, le Tribunal avait reçu 9 602 dossiers et en avait fermé 8 055. Il avait donc 1 547 dossiers en inventaire.

Il est important de souligner que seulement 850 (55 pour cent) des dossiers en inventaire pouvaient être considérés comme actifs à la fin de 1990. En outre, le traitement de 541 de ces dossiers (35 pour cent) était soit temporairement en suspens au Tribunal à différentes étapes du traitement (94 au Service de réception de nouveaux dossiers, 209 en attente d'une audience et 58 en attente d'une décision à l'égard d'une question préliminaire) soit indéfiniment en suspens à la CAT en instance de réexamen en vertu de la politique sur la douleur chronique (180). Les autres 156 dossiers en inventaire étaient reliés à des demandes ultérieures à des décisions (53 demandes de réexamen, 91 enquêtes de l'ombudsman et 12 demandes d'examen judiciaire).

TABLEAU 9

TEMPS DE TRAITEMENT MOYEN PAR ETAPES	
ETAPES DU TRAITEMENT	MOYENNE (en jours)
1. Préparation pour le BCJT	25
2. Travaux préparatoires en vue de l'audition	48
3. Inscription au calendrier des audiences	43
4. En attente de l'audition	63
5. Traitement de la décision	60

temps de traitement de tous les dossiers menés à terme en 1990, qui ne tiendraient pas compte de leur date de réception, entraînerait une surestimation du temps moyen de traitement complet puisque le résultat serait biaisé par d'anciens dossiers en souffrance qui n'étaient pas visés par l'objectif de quatre mois.

La meilleure méthode d'évaluation du respect de l'objectif de quatre mois consiste peut-être à analyser combien de temps les dossiers qui ont traversé toutes les étapes de traitement en 1990 ont passé en moyenne à chacune de ces étapes (sans tenir compte du moment de leur réception au Tribunal). La somme des temps moyens de chaque étape permettrait d'estimer le plus exactement possible le temps de traitement complet pour l'ensemble des dossiers. Suivent les résultats d'une analyse effectuée selon ces paramètres.

Les dossiers étaient confiés à des rédacteurs de descriptions de cas en moyenne 25 jours (jour s'entend de jour civil) après réception de tous les documents de la Commission et de l'appelant. Ils passaient ensuite en moyenne 48 jours au BCJT aux fins de préparation de l'audition, après quoi ils passaient en moyenne 43 jours au Service d'inscription des cas au calendrier des audiences pour fixer une date acceptable pour toutes les parties. Les dossiers qui suivaient le cours normal du traitement parvenaient à l'audition définitive environ 63 jours plus tard, mais certains cas nécessitaient des auditions supplémentaires. Une décision était rendue en moyenne 60 jours après l'audition définitive; cette période comprend les étapes de préparation des décisions et le temps nécessaire pour accomplir le travail nécessaire au stade postérieur.

En conséquence, le temps moyen de traitement des dossiers qui devaient passer par toutes les étapes de la procédure administrative et décisionnelle était de 239 jours (juste un peu moins de huit mois). Cette moyenne excède manifestement l'objectif de quatre mois; cependant, il faut souligner que de longues périodes du traitement sont en grande partie hors du contrôle du Tribunal. Par exemple, le temps moyen entre l'inscription des cas au calendrier des audiences et l'audition est de plus de deux mois. La durée de cette période reflète les difficultés inhérentes à la détermination d'une date acceptable pour toutes les parties. De même, à l'étape de la préparation des décisions, il est souvent nécessaire de consulter des membres du corps médical au sujet de nouvelles questions médicales soulevées lors de l'audition. Enfin, à l'étape postérieure, il est quelquefois nécessaire de communiquer avec les parties, d'obtenir des consentements, de consulter des médecins et de recueillir des observations des parties concernées. (Voir le tableau 9)

TABLEAU 7

DOSSIERS FERMÉS SANS AUDITION			
NOUVEAUX DOSSIERS			
Règles		45	9,87
Hors compétence		38	8,33
Retirés		294	64,47
Inactifs		79	17,32
Total		456	100,00
DEMANDES ULTÉRIEURES			
À DES DÉCISIONS		96	88,07
Menées à terme		11	10,09
Retirées		2	1,83
Dossiers inactifs		109	100,00
Total		565	
TOTAL			

Décisions rendues

Il est important de souligner qu'un dossier peut donner lieu à plus d'une décision. Dans certains cas, une question préliminaire doit être réglée par décision avant que la principale question en litige ne puisse être réglée. Cela s'applique autant aux nouveaux dossiers qu'aux demandes de réexamen; cependant, les décisions provisoires et définitives rendues à l'égard des demandes de réexamen ne sont pas présentées séparément dans ce rapport.

En 1990, 68 décisions provisoires et 963 décisions définitives ont été rendues à l'égard de nouveaux dossiers. Les demandes de réexamen ont donné lieu à 50 décisions. Le Tribunal a donc rendu 1 081 décisions.

Temps moyen de traitement

En 1989, le Tribunal s'était fixé un objectif de traitement complet de quatre mois. Cet objectif visait la plupart des dossiers. Il convient de noter que, malgré un manque de décisionnaires et de nombreuses vacances au Bureau des conseillers juridiques (BCJT), le Tribunal a réussi à traiter plus de la moitié des dossiers reçus et fermés en 1990 en respectant cet objectif. Le Tribunal a réduit son inventaire de dossiers en souffrance en traitant certains dossiers qu'il avait reçus au cours des années précédentes, et il est ainsi plus difficile d'évaluer dans quelle mesure il a respecté son objectif de quatre mois. L'examen du temps moyen de traitement des dossiers reçus et menés à terme en 1990 entraînerait une sous-estimation du temps moyen de traitement complet puisque le résultat obtenu ne tiendrait pas compte des dossiers plus difficiles non fermés. Par contre, un examen du

TABLEAU 8

DOSSIERS FERMÉS AVEC DÉCISION			
NOUVEAUX DOSSIERS			
Règles		931	99,36
Hors compétence		1	0,11
Retirés		5	0,53
Inactifs		0	0,00
Total		937	100,00
DEMANDES ULTÉRIEURES			
À DES DÉCISIONS		48	100,00
Hors compétence		0	0,00
Dossiers inactifs		0	0,00
Total		48	100,00
TOTAL		985	
Certains dossiers ont fait l'objet de décisions provisoires et définitives. Le nombre total de décisions rendues (1 081) est donc supérieur au nombre de dossiers fermés avec décision.			

TABLEAU 6

AUDITION DES CAS			
NOUVEAUX CAS:			
Audiences	867	Observations écrites	160
Séances d'audition des motions	58		
1 085			
DEMANDES ULTÉRIEURES			
Audiences	12	Observations écrites	3
Examen par des jurys	63		
78			
TOTAL (auditions):			
1 163			

Des 109 dossiers de demande de réexamen, 93 ont été fermés par suite du rejet de la plainte par l'ombudsman. Dans trois cas, les plaintes ont été portées devant des tribunaux sous forme de demandes de révision judiciaire (les trois demandes ont été rejetées). Des autres dossiers, 11 ont fait l'objet d'un retrait et deux ont été fermés pour cause d'inactivité. (Se reporter au tableau 7)

Fermés après audition mais sans décision

En 1990, 28 dossiers ont été fermés après audition mais sans qu'une décision ne soit rendue (2 pour cent des dossiers fermés). De ces dossiers, 26 étaient des demandes de réexamen dont 22 ont été rejetées. Les jurys auxquels elles avaient été confiées ont rédigé des notes informant le président du Tribunal qu'elles étaient manifestement non fondées, et elles n'ont pas fait l'objet de décision. Les quatre autres demandes ultérieures à des décisions ont été retirées. En ce qui concerne les nouveaux dossiers, ils ont tous deux été retirés pendant l'instruction des cas.

Ces cas ont été réglés par lettres ou mémoires plutôt que par décisions.

Fermés avec décision

La plupart des dossiers fermés en 1990 ont fait l'objet de décisions (985, ou 62 pour cent). De ce nombre, 931 nouveaux dossiers ont fait l'objet de décisions, cinq cas retirés ont fait l'objet de décisions et un cas ne relevant pas de la compétence du Tribunal a fait l'objet d'une décision. Enfin, 48 dossiers de demande ultérieure à des décisions ont été fermés avec décision. (Se reporter au tableau 8)

ANALYSE STATISTIQUE DES DOSSIERS FERMÉS

* Le total cumulatif inclut tous les dossiers reçus avant le 1 ^{er} janvier 1987.										
TOTAL (dossiers fermés)										
1 783										
2 022										
2 016										
1 578										
8 055										
Catégorie										
1987										
1988										
1989										
1990										
Total (cumulatif*)										
Nombre (%)										
Article 860	235	13,2	127	6,3	120	6,0	54	3,4	595	7,4
Article 15	144	8,1	99	4,9	79	3,9	118	7,5	466	5,8
Article 21	88	4,9	87	4,3	73	3,6	45	2,9	322	4,0
Article 77	348	19,5	288	14,2	230	11,4	296	18,8	1,203	14,9
Article 77 (opposition)	24	1,3	15	0,7	7	0,3	7	0,4	54	0,7
Dispositions particulières	839	47,1	616	30,5	509	25,2	520	33,0	2 640	32,8
Pensions	19	1,1	91	4,5	123	6,1	100	6,3	340	4,2
Capitalisation	7	0,4	26	1,3	46	2,3	29	1,8	108	1,3
Cotisations des employeurs	18	1,0	26	1,3	24	1,2	28	1,8	104	1,3
Admissibilité	777	43,6	1 097	54,3	1 015	50,3	685	43,4	3,904	48,5
Admissibilité et autres	821	46,0	1 240	61,3	1 208	59,9	842	53,4	4 456	55,3
Revisions judiciaires	3	0,2	2	0,1	5	0,2	3	0,2	13	0,2
Ombudsman	17	1,0	53	2,6	82	4,1	101	6,4	254	3,2
Réexamen	39	2,2	52	2,6	104	5,2	78	4,9	278	3,5
Eclaircissements	0	0,0	3	0,1	0	0,0	1	0,1	4	0,0
Demandes ultérieures	59	3,3	110	5,4	191	9,5	183	11,6	549	6,8
à des décisions	64	3,6	56	2,8	108	5,4	33	2,1	410	5,1
Hors compétence	1 783		2 022		2 016		1 578		8 055	

Productivité en 1990

Auditon des cas

En 1990, le Tribunal a procédé à l'audition de 1 085 nouveaux cas. De ces nouveaux cas, 867 (80 pour cent) ont été entendus en audience, 160 (15 pour cent) ont donné lieu à des auditions fondées sur des observations écrites et 58 (5 pour cent) lors de séances d'audition des motions. Le Tribunal a aussi procédé à l'audition de 78 demandes ultérieures à des décisions. De ces demandes, 12 (15 pour cent) ont été entendues en audience, 3 (4 pour cent) ont donné lieu à des auditions fondées sur des observations écrites, alors que les 63 (81 pour cent) autres n'ont pas fait l'objet d'audition proprement dite mais ont été examinées par des jurys du TAAAT. En 1990, le Tribunal a donc procédé à l'audition de 1 163 cas. (Se reporter au tableau 6)

Dossiers fermés

Fermés sans audition

Environ le tiers des dossiers fermés en 1990 n'avaient pas atteint l'étape de l'audition (565 des 1 578 dossiers fermés, ou 36 pour cent). De ce nombre, 456 dossiers étaient des nouveaux dossiers dont 294 ont été fermés par suite du retrait de la demande ou de l'appel (64 pour cent).

TABLEAU 4
ANALYSE STATISTIQUE DES DOSSIERS RECUS

Catégorie	1987	1988	1989	1990	Total (cumulatif*)
Article 860	115	78	46	42	642
Article 15	101	89	89	120	542
Article 21	79	82	66	51	339
Article 77	298	258	295	283	1 310
Article 77 (opposition)	14	10	10	8	66
Dispositions particulières	607	517	506	504	2 899
Pensions	119	44	40	20	568
Capitalisation	24	38	35	16	117
Cotisations des employeurs	17	33	26	26	142
Admissibilité	833	707	686	752	4 757
Admissibilité et autres	993	822	787	814	5 584
Révisions judiciaires	6	4	2	10	25
Ombudsman	60	84	108	82	345
Demandes de réexamen	50	75	102	78	330
Éclaircissements	1	2	1	0	4
Demandes ultérieures	117	165	213	170	704
à des décisions	48	55	110	28	415
Hors compétence	1 765	1 559	1 616	1 516	9 602
TOTAL (dossiers reçus)					

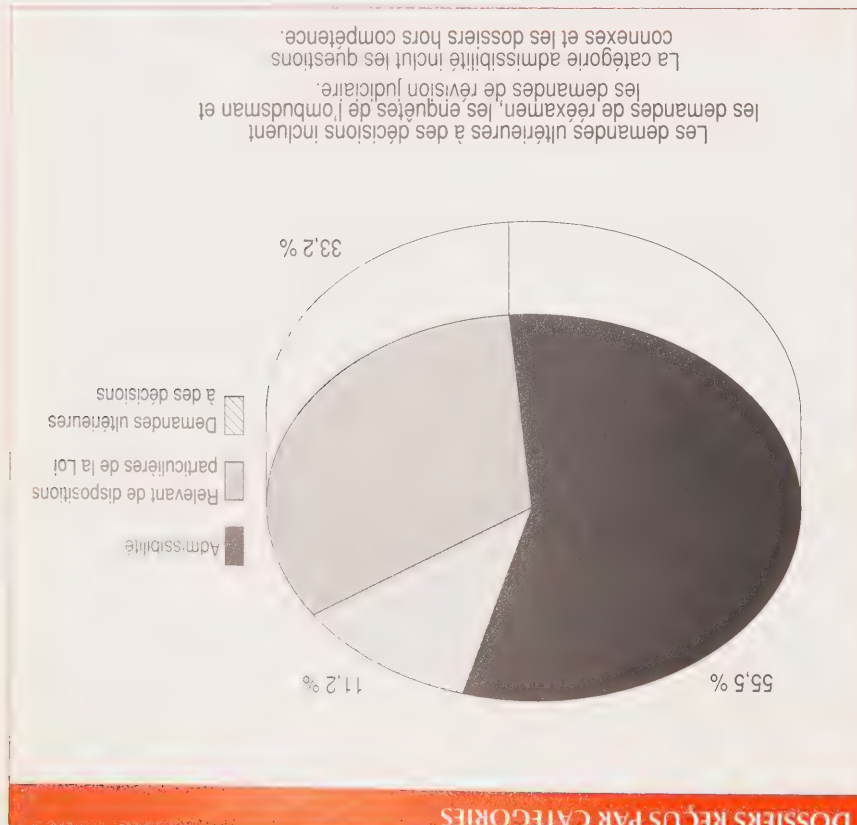
* Le total cumulatif inclut tous les dossiers reçus avant le 1^{er} janvier 1987.

Dossiers fermés

Suivent quelques observations dignes d'intérêt découlant d'un examen des dossiers fermés en 1990. Les dossiers fermés dans la catégorie des cas relevant de dispositions particulières de la Loi et dans celle de l'admissibilité sont proportionnellement représentatifs de la moyenne cumulative des cas réglés dans ces catégories pendant toutes les années d'existence du Tribunal. La catégorie des cas relevant de dispositions particulières de la Loi représente 33 pour cent de tous les dossiers fermés en 1990, comparativement à une moyenne cumulative de 32,8 pour cent. La catégorie des cas d'admissibilité représente 53 pour cent de tous les dossiers fermés en 1990, comparativement à une moyenne cumulative de 55 pour cent. Par contre, les dossiers fermés appartenant à la catégorie des demandes ultérieures à des décisions et les dossiers ne relevant pas de la compétence du Tribunal ne sont pas proportionnellement représentatifs des moyennes cumulatives de ces catégories. Les demandes ultérieures à des décisions représentent 12 pour cent de tous les dossiers fermés en 1990, comparativement à une moyenne cumulative de 7 pour cent. Les données indiquent clairement que le nombre de demandes ultérieures à des décisions augmente proportionnellement au fil des années. Il est intéressant de noter que la tendance va en sens inverse dans la catégorie des dossiers ne relevant pas de la compétence du Tribunal, car cette catégorie représente environ 2 pour cent de tous les dossiers fermés en 1990, comparativement à une moyenne cumulative de 5 pour cent. (Se reporter au tableau 5)

TABLEAU 3

DOSSIERS REÇUS PAR CATEGORIES

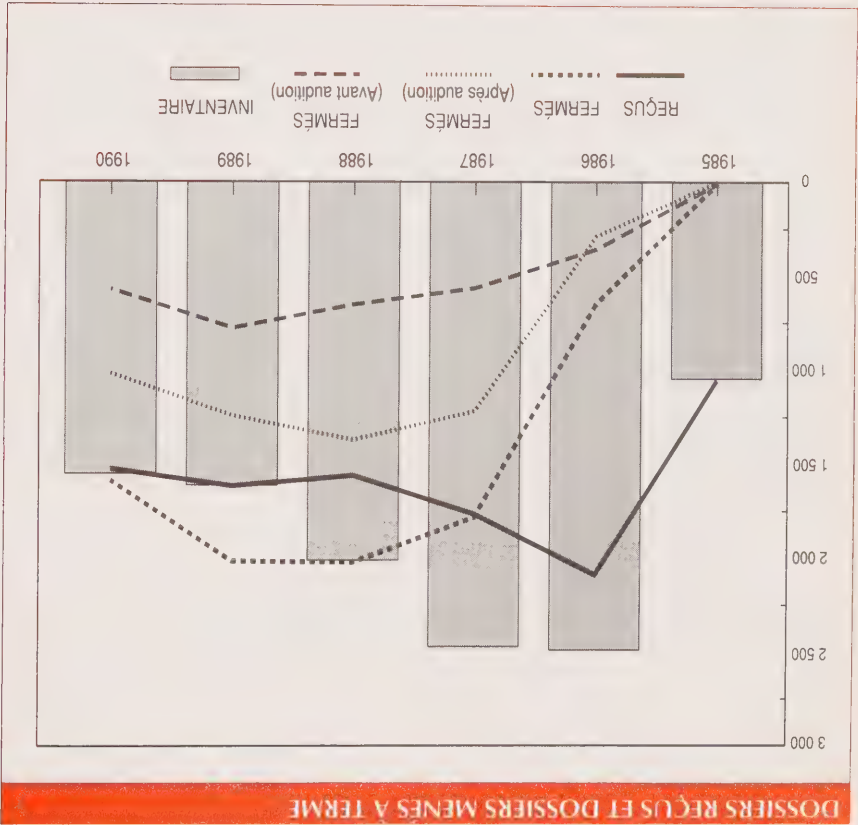


Il est intéressant de noter que la proportion de cas d'admissibilité a augmenté de 5 pour cent en 1990 comparativement à l'année précédente. En 1985, les cas de cette catégorie représentaient 82 pour cent de tous les dossiers reçus; cependant, leur nombre avait diminué de façon constante pour atteindre 49 pour cent de tous les dossiers reçus en 1989. En 1990, le nombre de cas d'admissibilité est passé à 54 pour cent de tous les dossiers reçus.

Enfin, il est aussi intéressant de noter que le Tribunal a enregistré le pourcentage le plus faible de cas ne relevant pas de sa compétence (moins de 2 pour cent de tous les dossiers reçus). En 1989, les cas de ce genre représentaient près de 7 pour cent de tous les dossiers reçus. Cette récente diminution découle principalement des efforts déployés par le Service de réception des nouveaux dossiers pour renseigner les appelants éventuels sur la procédure d'appel ainsi que sur la nature du Tribunal et de sa compétence.

(Se reporter au tableau 4)

Dossiers reçus et dossiers fermés



Dossiers reçus

Le profil des dossiers reçus en 1990 est très similaire à celui des deux années précédentes. Voici comment se répartissent les dossiers reçus: 56 pour cent portaient sur l'admissibilité à des indemnités (admissibilité et autres); 33 pour cent relevaient de dispositions particulières de la *Loi sur les accidents du travail*. 11 pour cent visaient des décisions déjà rendues par le Tribunal (demandes de réexamen de décisions antérieures, demandes de l'Ombudsman et demandes de révision judiciaire). (Se reporter au tableau 3)

Le nombre de demandes ultérieures à des décisions était appelé à augmenter proportionnellement au nombre de décisions rendues étant donné que la *Loi sur les accidents du travail* autorise les demandes de réexamen et de révision. En 1989, le nombre de demandes ultérieures à des décisions avait augmenté au point d'atteindre 13 pour cent de tous les dossiers reçus. En 1990, le Tribunal a reçu 170 demandes de ce genre, soit 11 pour cent de tous les dossiers reçus, ce qui représente une proportion légèrement inférieure comparativement à 1989.

SOMMAIRE DES STATISTIQUES DE FIN D'ANNÉE

Introduction

Ce sommaire des statistiques de fin d'année se divise en cinq parties. La première partie consiste en un bref aperçu de l'histoire du Tribunal en ce qui concerne les dossiers reçus, les dossiers fermés et les dossiers dont le traitement n'était pas encore achevé au 31 décembre 1990. La deuxième partie présente un aperçu plus détaillé des dossiers reçus et des dossiers fermés. La troisième partie, qui est consacrée à l'audition des cas et aux décisions, présente un examen des cas, d'une part, et des nombres totaux d'auditions et de décisions, d'autre part. (Il s'agit là d'une distinction importante étant donné que chaque cas peut donner lieu à plus d'une audition et que chaque audition peut faire l'objet de plus d'une décision.) L'examen de l'audition des cas et de la production de décisions en 1990 débute par un compte rendu des auditions, puis des dossiers fermés aux stades préalable et postérieure à l'audition. Cet examen se poursuit par un compte rendu plus détaillé des décisions rendues et se termine par un compte rendu du temps de traitement des cas, plus particulièrement à la lumière de l'objectif de traitement de quatre mois. La quatrième partie, donne un aperçu du mode de représentation lors des audiences. Enfin, la cinquième partie présente un compte rendu de l'inventaire des dossiers à la fin de l'année.

Aperçu

Le 31 décembre 1985, soit quelques mois après sa création en octobre 1985, le Tribunal avait reçu 1 057 dossiers, en avait mené dix à terme et avait reporté les autres à l'année suivante. En 1986, soit au cours de sa première année complète de fonctionnement, le Tribunal a reçu 2 089 dossiers et en a mené 646 à terme. Au 31 décembre 1986, l'inventaire des dossiers (cas non réglés) comptait donc environ 2 500 dossiers.

En 1987, le Tribunal a commencé à réduire son inventaire cumulé en fermant 18 dossiers de plus qu'il en avait reçus (1 765 dossiers reçus et 1 783 dossiers fermés). En 1988, il a reçu 1 559 dossiers et en a fermé 2 022, réduisant ainsi son inventaire cumulé de 463 dossiers. En 1989, il a reçu 1 616 dossiers et en a mené 2 016 à terme, réduisant ainsi à nouveau son inventaire cumulé, cette fois de 400 dossiers. En 1990, il a reçu 1 516 dossiers et en a fermé 1 578, réduisant ainsi à nouveau son inventaire cumulé, cette fois de 62 dossiers. (Se reporter au tableau 2)

La durée de vie moyenne des dossiers reçus en 1990 était de 177 jours, ce qui est supérieur à celle des dossiers reçus en 1989 et à celle des dossiers composant l'inventaire de fin d'année de 1989 (139 jours). (La durée de vie des dossiers correspond au temps écoulé après le travail de réception des nouveaux dossiers et ne tient pas compte des dossiers faisant intervenir des troubles de la douleur chronique, qui sont renvoyés à la Commission.)

Jurisprudence

Les décisions du Tribunal ont été placées dans des reliures permanentes munies de tabulateurs facilitant leur repérage.

Le Fonds de décisions judiciaires traitant des accidents du travail et du droit administratif a aussi été placé dans des reliures permanentes. Le personnel de la bibliothèque procède actuellement à une mise à jour de la base de données sur la jurisprudence en vue de fournir des renseignements précis sur l'emplacement des décisions.

SERVICE DE L'INFORMATIQUE

Le Service de l'informatique a été touché par les changements apportés au sein du personnel cadre du Tribunal en 1990. Le responsable de ce service relève maintenant du chef de l'information, qui assure la direction générale et la planification stratégique des ressources informatiques du Tribunal.

À la fin de 1990, le Service de l'informatique mettait la touche finale à un programme détaillant l'utilisation future de l'informatique, à une présentation aux fins du financement de l'augmentation de la puissance du matériel informatique en 1991 et à un programme d'installation d'un système automatisé de suivi des dossiers.

Dans l'ensemble, le Tribunal fait bon usage de ses ressources informatiques et tente d'élaborer des modes d'utilisation qui lui permettent de mettre à profit tous les dispositifs pour lesquels des fonds sont actuellement engagés.

SERVICES EN FRANÇAIS

Le Tribunal a intégré le français dans la plupart de ses services, exception faite de certains aspects des services de documentation. La réception, le Service de réception des nouveaux dossiers et le Bureau des conseillers juridiques du Tribunal disposent maintenant de français et le Tribunal traite leurs dossiers. Tous les documents relatifs aux audiences, y compris les formulaires de demande, les renseignements généraux et les directives de procédure sont maintenant offerts en français. Le Tribunal emploie une traductrice à plein temps, et des jurys francophones instruisent les cas en français à la demande des appelants, conformément aux dispositions de la *Loi de 1986 sur les services en français*.

Cette plus grande accessibilité de l'index des mots-clés et du guide des mots-clés a poussé le Tribunal à mettre encore plus l'accent sur l'examen et l'amélioration continue des mots-clés afin d'assurer une classification cohérente des décisions du Tribunal.

Les sommaires des décisions du Tribunal paraissent maintenant en français et en anglais dans le *W.C.A.T. Reporter*. De plus, le Tribunal a pris des arrangements avec la Commission pour y publier les études effectuées en application de l'article 86n de la Loi sur les accidents du travail.

Le bulletin du Tribunal, *Gros plan sur le TAAAT*, a commencé à paraître en 1990. En plus d'améliorer la communication entre le Tribunal et les différents groupes intéressés, ce bulletin a fort tirage a permis d'accroître énormément le nombre de lecteurs des autres publications du Tribunal, telles que la revue *Compensation Appeals Forum*, le *Rapport annuel* et le guide intitulé *Researching Workers' Compensation Appeals Tribunal Decisions*. La brochure intitulée *Guide pratique du Tribunal d'appel des accidents du travail* est avertie très populaire. Il a été possible d'augmenter la distribution de cette publication, tirée à 10 000 exemplaires, grâce à des ententes conclues avec Information juridique communautaire de l'Ontario et la Commission des accidents du travail.

Le Service de l'information envisage de libérer son personnel pour qu'il tienne des séances de formation sur l'utilisation des publications du Tribunal. De telles séances de formation pourraient avoir lieu partout en province en fonction de la demande.

Faits saillants concernant la bibliothèque

Catalogue

La bibliothèque a rendu son fonds documentaire plus accessible en procédant aux changements suivants: reclassification des publications gouvernementales et intégration de ces publications au fonds documentaire principal; examen des politiques d'analyse documentaire et de classification, suivi des changements nécessaires; mise à jour de tous les fichiers de façon à ce qu'ils se conforment aux nouvelles normes en vigueur.

Acquisitions

En 1990, 330 livres et documents gouvernementaux ont été ajoutés au fonds documentaire. La bibliothèque a ajouté 1 694 notices à sa base de données et 274 à une base de données sur la jurisprudence.

Périodiques

Les renseignements relatifs aux périodiques, qui étaient auparavant sur fiches, ont été versés dans une base de données.

Les périodiques du Service de l'information ont été intégrés au fonds documentaire de la bibliothèque et quelques rayonnages supplémentaires ont été ajoutés pour les recevoir.

Prêts interbibliothèques

La bibliothèque a obtenu 906 ouvrages par le truchement de prêts interbibliothèques.

Par ailleurs, le Tribunal est très heureux d'avoir pu retenir les services de deux médecins de traitement des maladies professionnelles et environnementales (St. Michael's Occupational and Environmental Health Unit) (université de Toronto) et le centre médical McMaster, clinique de traitement des maladies professionnelles (McMaster Medical Centre, Occupational Health Clinic) (université McMaster d'Hamilton). Le Tribunal a donc maintenu l'accès à de nombreux spécialistes chevronnés sur les plans clinique et théorique dans des domaines tels que la toxicologie, l'hygiène industrielle et la chimie.

Le Tribunal dispose aussi d'une équipe multidisciplinaire du même genre par le truchement de la clinique Irene Smythe (Irene Smythe Pain Clinic) de l'hôpital de Toronto, division de l'hôpital général de Toronto, et du service de recherche sur la douleur (Pain Investigation Unit) de l'hôpital Toronto Western. Il s'agit de deux des plus importants centres canadiens de recherche sur la douleur et sur son traitement. Les directeurs de ces deux centres figurent au nombre des assessseurs médicaux nommés en vertu de l'article 86h.

Quelques-unes des questions médicales les plus complexes examinées par le Tribunal en 1990 sont exposées ailleurs dans ce rapport. À compter de cette année, la bibliothèque du Tribunal disposera de tous les rapports médicaux et comptes rendus de recherche documentaire d'importance produits par les assessseurs médicaux. Le Tribunal espère que ces renseignements contribueront aux recherches et qu'ils fourniront de bons exemples de leur intégration dans les décisions.

Travailleurs juridiques, stade postérieur à l'audience

Quand un jury constate que des renseignements supplémentaires sont nécessaires après une audience, le dossier est transmis à un travailleur juridique pour qu'il coordonne la suite de l'enquête. Les travailleurs juridiques affectés au traitement des cas au stade postérieur à l'audience relèvent directement de l'avocate générale d'un chef de groupe.

SERVICE DE L'INFORMATION

Le Service de l'information, qui est chargé des publications et de la bibliothèque du Tribunal, offre des services d'information au personnel du Tribunal, à ses membres et au grand public.

Publications

Le lancement du *Decision Digest Service* (DDS) en 1990 a été couronné de succès. Cette publication renferme les sommaires de toutes les décisions rendues depuis le 15 décembre 1989. L'utilisateur peut repérer les sommaires pertinents en partant des sujets traités (au moyen du *Keyword Index*) ou en partant des dispositions et des règlements de la Loi (au moyen du *Annotated Statute*). En 1991, les composantes index et *Annotated Statute* du DDS, qui sont contenues dans la reliure intitulée *Cumulative Index*, seront révisées de façon à y verser toutes les décisions rendues par le Tribunal depuis sa création. Également en 1991, le *Keyword Guide* sera ajouté à la reliure intitulée *Cumulative Index*.

Conseillers médicaux

Les conseillers médicaux participent encore systématiquement aux examens effectués au stade préalable à l'audience pour évaluer si les dossiers médicaux sont complets et pour déterminer s'ils reposent sur des enquêtes et des rapports médicaux appropriés. À la suite de ces examens, le BCJT peut informer les parties qu'il serait souhaitable:

- 1) de combler les lacunes entre les rapports médicaux fournis;
- 2) d'obtenir des précisions sur les constatations des médecins auteurs des rapports fournis;
- 3) d'obtenir des mémoires ou des renseignements généraux sur l'état pathologique faisant l'objet du cas;
- 4) d'obtenir des renseignements médicaux d'un des assessseurs nommés en vertu de l'article 86h.

Les conseillers médicaux continuent également à veiller à ce que la liste des assessseurs médicaux réponde aux besoins du Tribunal autant sur le plan du nombre que sur celui de la qualité. En 1990, quelques-uns des praticiens les plus renommés dans des domaines hautement spécialisés de la médecine ont été nommés sur la recommandation des conseillers en vue d'assurer que le Tribunal demeure au fait des questions nouvelles faisant leur apparition dans le monde médical.

Les conseillers médicaux participent aussi à un examen interne visant à évaluer le traitement des faits et des questions d'ordre médical. Grâce à un examen des décisions rendues, le Tribunal est en mesure d'évaluer si ses décisions ont bien cerné les questions et la preuve d'ordre médical de même que si ses modalités de traitement et ses pratiques en la matière sont appropriées.

C'est avec tristesse que le Tribunal a accueilli la nouvelle du décès du Dr Jack Soper Crawford, ophtalmologue, en juin 1990. Le Dr Crawford, qui était au nombre des premiers conseillers médicaux du Tribunal, avait participé à plusieurs exposés internes sur l'ophtalmologie, et le Tribunal lui doit son excellente liste d'assesseurs dans ce domaine. Il sera remplacé par le Dr John Speakman à compter de janvier 1991. Le Dr Speakman est professeur au département d'ophtalmologie de l'université de Toronto, ophtalmologue au centre médical Sunnybrook de Toronto et ophtalmologue principal à l'hôpital de Toronto (division de l'hôpital général de Toronto).

Assesseurs médicaux

Seulement deux des 21 premiers assessseurs médicaux nommés en vertu de l'article 86h en juin 1987 ont décliné le renouvellement de leur mandat. (Un parce qu'il quitterait le Canada et l'autre parce qu'il prenait sa retraite.) Le Tribunal dispose donc de 163 assessseurs médicaux, en comptant ceux qui étaient en voie d'être nommés.

En 1990, certains des rédacteurs de descriptions de cas du BCJT ont été affectés aux dossiers relevant de l'article 77. Cette spécialisation des tâches a pour but d'assurer un traitement aussi rapide que possible des cas d'accès aux dossiers.

Le groupe des rédacteurs de descriptions de cas est dirigé par un avocat principal du BCJT.

Travailleurs juridiques, stade préalable à l'audience

Une fois les descriptions de cas rédigées, les cas sont inscrits au calendrier des audiences et confiés à des travailleurs juridiques ou, lorsqu'il s'agit de cas complexes, à des avocats. Environ, 90 pour cent des cas sont confiés à des travailleurs juridiques. Ils ont pour tâche de régler les problèmes pouvant survenir avant les audiences et, au besoin, de répondre aux questions des parties en ce qui concerne la préparation de leurs cas.

En 1990, le nombre de travailleurs juridiques affectés à la préparation des cas au stade préalable à l'audience est passé de quatre à sept. Ce groupe se compose maintenant d'un chef de groupe, de trois travailleurs juridiques principaux et de trois travailleurs juridiques.

Avocats

Les avocats s'occupent des cas faisant intervenir des questions juridiques nouvelles ou des questions considérées comme présentant un intérêt particulier pour le Tribunal. Les avocats du BCJT relèvent directement de l'avocat générale du Tribunal.

Les avocats peuvent, avec l'autorisation des jurys, assister aux audiences pour contre-interroger des témoins ou transmettre des éléments de preuve supplémentaires provenant habituellement des assessseurs médicaux. Ils ont pour tâche de veiller à ce que les jurys disposent de tous les éléments de preuve nécessaires. Les avocats ne peuvent émettre d'observations au sujet des faits; toutefois, ils peuvent en émettre au sujet des questions juridiques examinées et, le cas échéant, ils les présentent par écrit ou, à la demande des jurys, oralement lors des audiences. Toutes leurs observations doivent être émises avec autant d'impartialité que possible.

En 1990, le nombre d'avocats du BCJT est passé de huit à cinq, sans compter l'avocate générale. Cette diminution s'est faite parallèlement à l'augmentation du nombre de travailleurs juridiques affectés à la préparation des cas. Ce changement dénote le fait que le nombre de questions juridiques nouvelles nécessitant l'intervention d'avocats diminue au fur et à mesure que le Tribunal prend de la maturité.

Bureau de liaison médicale

Le Bureau de liaison médicale (BLM) examine toutes les descriptions de cas. Il détermine s'il est nécessaire de mener des enquêtes médicales supplémentaires et, le cas échéant, si le médecin traitant peut fournir les renseignements requis ou s'il faut recourir à l'un des assessseurs nommés en vertu de l'article 86h.

Le BLM est dirigé par un chef de groupe.

LE RAPPORT DU TRIBUNAL

LA PROCÉDURE D'APPEL

La procédure d'appel est représentée graphiquement ci-contre.

VICE-PRÉSIDENTS, MEMBRES ET PERSONNEL CADRE

Le lecteur trouvera à l'annexe A une liste des vice-présidents, des membres, du personnel cadre et des conseillers médicaux en fonction en 1990 de même qu'un compte rendu des changements apportés à la liste d'assesseurs et un bref résumé du curriculum vitae des vice-présidents et des membres nommés récemment.

BUREAU DES CONSEILLERS JURIDIQUES DU TRIBUNAL

Le Bureau des conseillers juridiques du Tribunal (BCJT) se compose de six groupes relevant de l'avocate générale du Tribunal.

Service de réception des nouveaux dossiers

En plus de recevoir tous les dossiers et de répondre aux questions du public au sujet des appels et de la procédure d'appel, le Service de réception des nouveaux dossiers (SRND) est principalement chargé des cas relevant de dispositions particulières de la Loi. Cette catégorie de cas se compose: des cas d'accès à l'information relevant de l'article 77, visant l'accès aux dossiers des travailleurs; des requêtes en vertu de l'article 21, ayant trait aux demandes d'examen médicaux émanant des employeurs; des requêtes en vertu de l'article 15, portant sur le droit d'interester une action en dommages-intérêts. En 1990, le SRND a aussi reçu sa première demande relevant de l'article 54b, demande portant plus précisément sur le renforcement.

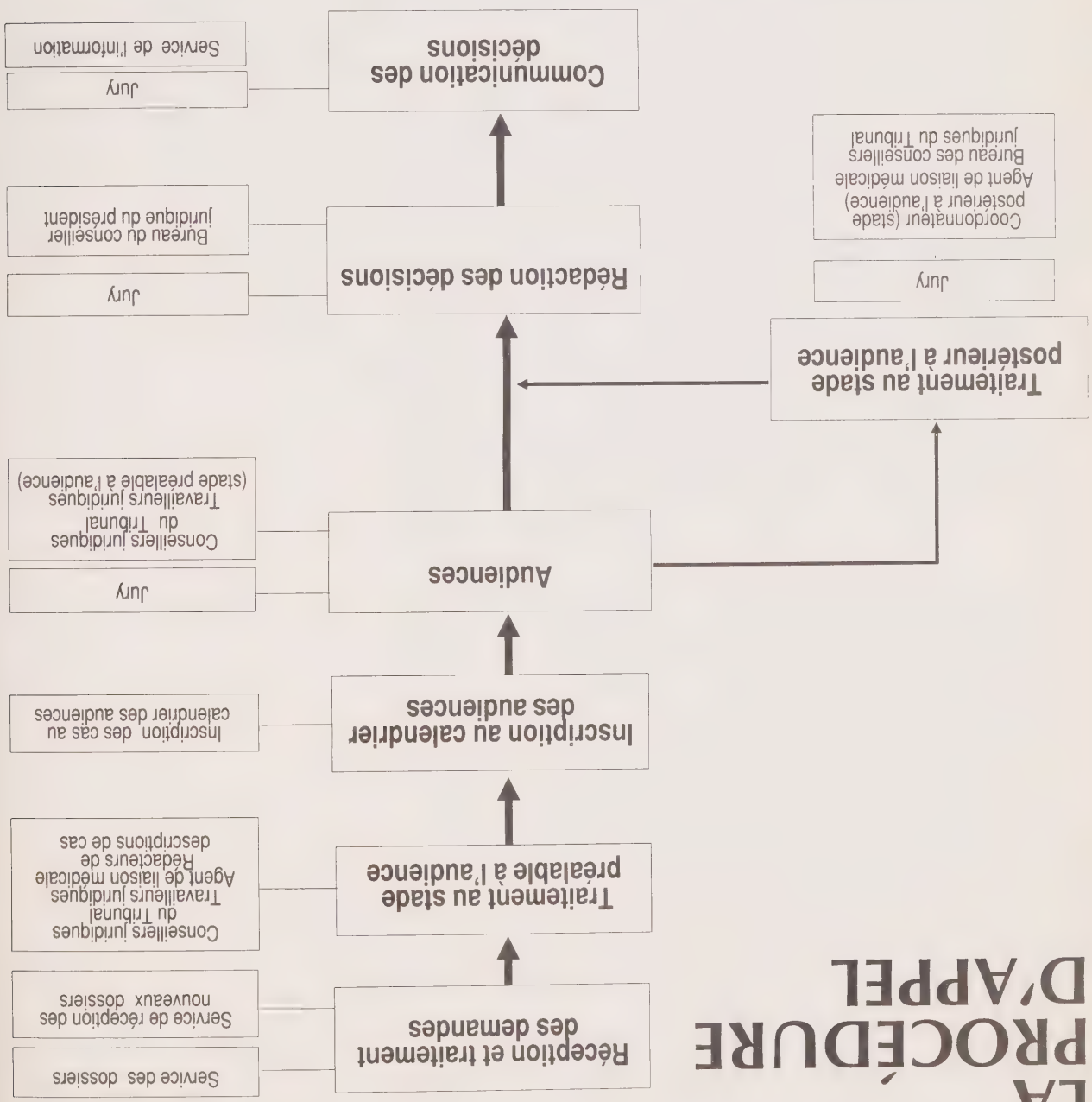
Les avocats du BCJT exercent un contrôle sur les aspects juridiques du travail accompli au SRND. Les cas relevant de dispositions particulières de la Loi constituent environ 30 pour cent de tous les dossiers reçus et font souvent intervenir des questions juridiques complexes.

Le SRND est dirigé par un chef de groupe.

Rédacteurs de descriptions de cas

Les rédacteurs de descriptions de cas sont chargés de préparer tous les dossiers en vue des audiences en suivant un modèle préétabli et en respectant des délais d'exécution déterminés.

LA PROCÉDURE D'APPEL



Services spéciaux et services administratifs

- Service de l'informatique
- Finances et administration
- Service de traduction française
- Service de l'information (bibliothèque et publications)
- Service des ressources humaines
- Centre de reprographie et salle du courrier
- Services de secrétariat
- Service de la statistique
- (traitement des données et rapports)
- Centre de traitement de texte

RÉVISIONS JUDICIAIRES

En 1990, la cour divisionnaire a entendu trois demandes de révision judiciaire déposées contre des décisions du Tribunal. Voici les décisions visées par ces demandes:

- 1) *Décision n° 462/88*, datée du 23 novembre 1988 (demande entendue le 7 février 1990);
- 2) *Décisions n° 695/88*, *n° 696/88* (1989), *10 W.C.A.T.R. 308*, et *n° 697/88*, toutes datées du 9 mars, 1989, *décision n° 850/87*, datée du 11 février 1988, *décision n° 981/87*, datée du 3 juin 1988, *décision n° 850/87R*, (1990), *14 W.C.A.T.R. 1*, et *décision n° 981/87R*, datée du 23 mars 1990 (demandes entendues ensemble le 29 novembre 1990);
- 3) *Décision n° 258/90*, datée du 23 avril 1990 (demande entendue le 7 décembre 1990).

Ces trois demandes de révision ont été rejetées.

À la fin de 1990, cinq demandes de révision judiciaire étaient encore en instance. Voici les décisions visées par ces demandes:

- Décision n° 799/87*, datée du 3 septembre 1987;
Décision n° 298/88 (1988), *9 W.C.A.T.R. 281*;
Décision n° 656/88, datée du 9 décembre 1988;
Décision n° 917/88, datée du 11 août 1989;
Décision n° 977/89 (1990), *13 W.C.A.T.R. 298*.

Une demande d'autorisation d'interjeter appel a été déposée contre la décision rendue par la cour divisionnaire comme suite à la demande de révision judiciaire entendue le 29 novembre 1990.

À la fin de 1990, une demande d'autorisation d'interjeter appel déposée contre une décision de la cour divisionnaire demeurait encore en instance. Cette demande visait la *décision n° 525*, datée du 19 mars 1987. La demande de révision judiciaire avait été rejetée le 9 juin 1988, et la demande d'autorisation d'interjeter appel avait été déposée le 30 juin 1988. Aucune autre démarche n'a été faite depuis le dépôt de cette demande d'autorisation.

La constitutionnalité de la *Loi sur les accidents du travail* n'a été contestée que dans quelques cas. C'est en 1990 que le Tribunal a rendu la décision la plus détaillée sur le sujet. Il s'agit de la *décision* n° 534/90I (1990), 17 W.C.A.T.R. 187. Pour rendre cette décision, le jury s'est fondé sur l'arrêt *Cuddy Chicks Ltd. v. (Ontario Labour Relations Board)* (1989), 62 D.L.R. (4th) 125 (récent arrêt de la Cour d'appel de l'Ontario en appel devant la Cour suprême du Canada). Dans sa décision, le jury a conclu que le Tribunal ne constituait pas un "tribunal compétent" et qu'il ne pouvait pas accorder la réparation prévue à l'article 24 de la Charte. Le jury a aussi conduit que l'arrêt *Cuddy Chicks* avait force exécutoire sur le Tribunal et qu'il le rendait compétent à l'égard des contestations déposées en vertu du paragraphe 52(1) de la Loi constitutionnelle. Le jury a relevé le fait que les auteurs de l'arrêt *Cuddy Chicks* n'avaient pas examiné si un tribunal *devait* entendre les contestations déposées en vertu de la Charte ou si un tribunal pouvait conclure qu'il serait plus approprié pour les parties d'interester une action en justice. Dans la *décision* n° 534/90I, le jury a demandé aux parties de déposer des observations écrites expliquant si, selon elles, le Tribunal avait le pouvoir discrétionnaire de refuser d'examiner les contestations relevant de la Charte et, le cas échéant, quels critères il devait appliquer dans l'exercice d'un tel pouvoir. À la fin de 1990, le Tribunal n'avait encore reçu aucune observation à ce sujet.

Autres

Parmi les autres questions juridiques et médicales d'importance examinées en 1990, mentionnons: le caractère rétroactif des indemnités accordées au titre de maladies professionnelles [*décision* n° 420/88 (1990), 14 W.C.A.T.R. 7]; le caractère rétroactif des versements d'intérêts [*décision* n° 467/89 (1990), 14 W.C.A.T.R. 117]; le statut de personne à charge dans les cas de décès faisant intervenir des conjoints séparés ou des situations maritales particulières [*décisions* n° 560/90 (1990), 17 W.C.A.T.R. 236, et n° 632/90 (1990) 16 W.C.A.T.R. 268]; les crises cardiaques au travail [*décisions* n° 240/89 (1990), 16 W.C.A.T.R. 113, et n° 544/89 (4 septembre 1990)].

Enfin, le Tribunal a continué à examiner la question des paiements qui doivent être inclus dans la base salariale servant au calcul des indemnités. Se reporter aux *décisions* 16 W.C.A.T.R. 32 et n° 797/89 (1990), 14 W.C.A.T.R. 175.

visant l'application de cette méthode dans un cas particulier et ceux mettant en cause sa validité ou la validité de ses éléments. Les décisions de la Commission devraient être traitées avec déférence étant donné qu'elle est investie de vastes pouvoirs discrétionnaires dans l'élaboration de méthodes de tarification et qu'elle dispose de spécialistes dans ce domaine complexe. La perspective systémique, voulant que les employeurs d'une même catégorie soient soumis au même traitement, est particulièrement importante mais n'empêche pas un employeur de contester certains aspects de la méthode CAD-7.

Les jurys auteurs des *décisions* n° 89/4/89 (1990), 14 W.C.A.T.R. 194, et n° 296/90 (1990), 14 W.C.A.T.R. 346, ont adopté la même approche générale tout en ajoutant deux précisions. Dans la *décision* n° 89/4/89, le jury a déclaré que la Commission ne pouvait s'affranchir complètement de son pouvoir discrétionnaire et appliquer la méthode CAD-7 sans tenir compte des résultats injustes ou déraisonnables pouvant en découler. Dans la *décision* n° 296/90, le jury a conclu que le pouvoir discrétionnaire de la Commission ne peut priver le Tribunal de sa compétence d'examen de la réalité des affaires pour déterminer, par exemple, si une compagnie succédant à une autre constitue essentiellement une nouvelle compagnie.

Cotisations de démerite

Le Tribunal a aussi examiné certains facteurs pour déterminer s'il convenait de les utiliser dans l'annulation de cotisations de démerite. Suivent quelques exemples de questions examinées. Convient-il d'annuler une cotisation de démerite lorsque l'employeur est une oeuvre de bienfaisance? Faut-il tenir compte du fait qu'un groupe de taux n'est pas homogène et que la plupart de ses membres enregistrent moins d'accidents parce qu'un des employeurs effectue un travail plus dangereux? Se reporter aux *décisions* n° 39/90 (1990), 13 W.C.A.T.R. 333, et n° 443/90 (1990), 16 W.C.A.T.R. 253.

La Charte canadienne des droits et libertés

La *Charte canadienne des droits et libertés* enchaînée dans la Loi constitutionnelle garantit les libertés civiles des Canadiens. Le paragraphe 24(1) de la Charte prévoit que toute personne victime d'une violation des droits ou des libertés garantis par ladite charte peut s'adresser à un "tribunal compétent" pour obtenir une réparation juste et convenable. Le paragraphe 52(1) prévoit que la Loi constitutionnelle est la "loi suprême" du Canada et que toute loi incompatible avec ses dispositions est inopérante, dans la mesure de l'incompatibilité.

Un grand nombre de cours et de tribunaux administratifs ont examiné si ces derniers ont la compétence requise pour trancher les contestations de la constitutionnalité des lois dont ils relèvent. Le cas échéant, il reste à déterminer s'ils peuvent accorder la réparation prévue au paragraphe 24(1) de la Charte ou s'ils sont simplement autorisés à constater qu'une disposition législative est inopérante en vertu du paragraphe 52(1) de la Charte compte tenu des circonstances particulières à un cas donné.

Distinction entre travailleur et exploitant indépendant

La question de la distinction entre travailleur et exploitant indépendant a été soulevée fréquemment. Dans ses décisions, le Tribunal a tranché la question en se fondant sur les principes de la *common law* et a opté le plus souvent pour le "test organisationnel", plutôt que pour l'ancien "test du contrôle". Les jurys du Tribunal ont estimé que le test organisationnel était plus approprié pour déterminer le caractère de la relation de travail. Dans plusieurs décisions rendues en 1990, le Tribunal a insisté sur le fait que toute la preuve doit être évaluée pour déterminer en quoi consiste la relation de travail. Se reporter à la *décision n° 478/90* (17 août 1990) dans laquelle le jury a procédé au test organisationnel tout en indiquant que toute la preuve doit être examinée. Dans la *décision n° 729/90* (5 novembre 1990), le jury a opté pour un "test hybride" renfermant des éléments du "test de contrôle" et du "test organisationnel" ainsi que d'autres facteurs. Le jury a dit être d'avis qu'il fallait surtout se demander si la personne constituait une entité commerciale suffisamment autonome pour devoir assumer les coûts et les risques de l'indemnisation. Plus récemment, le jury auteur de la *décision n° 921/89* (1990), 14 W.C.A.T.R. 207, a émis des commentaires sur l'évolution du test conçu pour distinguer les travailleurs des exploitants indépendants. Il a indiqué que toute la relation de travail devait être examinée et a proposé un test de la réalité des affaires reposant sur 11 facteurs.

Transfert des coûts entre employeurs

Dans les cas de négligence impliquant plus d'un employeur, la Loi permet à la Commission de transférer, en tout ou en partie, les coûts d'accident à une autre catégorie d'employeurs ou à un autre groupe lorsqu'elle est convaincue qu'un employeur de l'annexe 1, autre que l'employeur au moment de l'accident, a contribué à la lésion. Dans des décisions rendues précédemment, le Tribunal avait conclu que la disposition visée ne s'appliquait que dans les cas de négligence manifeste. Cependant, dans les *décisions n° 17/89* (1990), 16 W.C.A.T.R. 46, et *n° 688/89* (1990), 14 W.C.A.T.R. 156, le Tribunal a conclu qu'il fallait appliquer la même norme de preuve que celle appliquée en *common law* dans les cas de négligence. Le transfert des coûts peut être autorisé lorsque la négligence est prouvée selon la prépondérance des probabilités. Comme le transfert des coûts est discrétionnaire, le Tribunal a renvoyé les cas à la Commission pour qu'elle détermine les sommes à transférer à la lumière des constatations de négligence auxquelles il était parvenu et de toute considération administrative éventuelle.

Tarification par incidence

En 1990, la méthode de tarification par incidence CAD-7, qui sert au calcul des cotisations des employeurs appartenant à certaines industries, a fait l'objet de trois contestations devant le Tribunal. Bien qu'il ait été confirmé que la méthode de tarification CAD-7 cadre généralement avec la Loi, le jury auteur de la décision n° 86/89 (1990), 14 W.C.A.T.R. 63, a conclu que le Tribunal avait la compétence requise pour entendre les appels relatifs aux cotisations, y compris ceux

Evaluations aux fins de pension

En 1990, le Tribunal a continué à acquiescer à l'expérience dans le domaine des évaluations aux fins de pension. Dans les cas faisant intervenir des troubles au sujet desquels la Commission n'a encore émis aucune ligne directrice, le Tribunal doit déterminer quels autres documents peuvent favoriser une meilleure compréhension des troubles en question et ainsi contribuer à l'évaluation du degré d'invalidité. Dans la *décision* n° 135/90 (1990), 14 W.C.A.T.R. 266, le Tribunal a examiné les lignes directrices établies par l'American Medical Association relativement aux maladies vasculaires et celles établies par la Commission relativement à l'amputation des mains pour évaluer le degré d'invalidité d'un travailleur gravement atteint du syndrome de Loriga. De même, le jury saisi d'un cas faisant intervenir des troubles d'acouphène exceptionnellement graves a conclu que le barème des taux relatifs à l'acouphène ne permettrait pas d'indemniser le travailleur de tous les aspects de son invalidité et s'est servi du barème des taux relatifs aux invalidités attribuables à des traumatismes psychiques. Le lecteur peut aussi se reporter à la *décision* n° 876/88 (1990), 13 W.C.A.T.R. 89. Enfin, le lecteur intéressé à en apprendre davantage sur une approche similaire adoptée à l'égard d'un cas faisant intervenir des lésions aux yeux peut se reporter à la *décision* n° 807/88F (6 avril 1990).

Le Tribunal a aussi examiné si certains barèmes particuliers cadrent avec la Loi ou avec d'autres barèmes. Dans la *décision* n° 453/89 (1990), 15 W.C.A.T.R. 81, le Tribunal a appuyé la politique de la Commission selon laquelle les travailleurs atteints de lésions aux yeux sont indemnisés en fonction de leur acuité visuelle corrigée au moyen de lunettes étant donné qu'il n'y a habituellement pas diminution de la capacité de gain dans de tels cas. Le lecteur peut se reporter à la *décision* n° 68/90 (1990), 16 W.C.A.T.R. 211, dans laquelle le jury compare les barèmes des taux relatifs aux genoux et au dos.

Le Tribunal a aussi examiné la politique de la Commission relative aux facteurs de hausse pour lésions multiples. Le jury auteur de la *décision* n° 831/88F (1990), 16 W.C.A.T.R. 26, a conclu que l'adite politique s'appliquait dans les cas d'invalidité bilatérale des membres mais il a estimé qu'il existait un lien fonctionnel direct entre le pied et le genou et a accordé un facteur de hausse pour lésions multiples pour tout le membre. Dans la *décision* n° 565/89 (1990), 16 W.C.A.T.R. 121, le jury a conclu qu'il n'était pas nécessaire d'envisager l'octroi d'un facteur de hausse particulier vu la possibilité d'utiliser l'approche de l'intégralité de la personne dans les évaluations aux fins de pension.

Tournons-nous maintenant vers le Tribunal. De nombreux jurys ont procédé à des évaluations aux fins de pension au titre de la douleur chronique et de la fibromyalgie. Dans les cas où des indemnités sont demandées pour des périodes antérieures à mars 1986, les jurys sont encore confrontés à la nécessité de faire la distinction entre la douleur psychogène (douleur chronique et douleur mixte) et la douleur résultant de traumatismes psychiques. Se reporter à la *décision n° 106/89* (1990), 16 W.C.A.T.R. 59. Avec le temps, toutefois, une telle distinction devrait être de moins en moins nécessaire.

L'adoption de la politique sur les troubles de la douleur chronique par la Commission n'entraînera pas une augmentation des indemnités de tous les prestataires atteints de douleur chronique. Certaines anciennes décisions de la Commission indemnisent déjà plus ou moins les travailleurs atteints de douleur chronique puisqu'il est difficile de faire la distinction entre la douleur organique et la douleur non organique. Aucune autre pension n'a donc été accordée lorsqu'un jury était convaincu qu'un travailleur touchait une pension d'indemnisation à la fois de la douleur organique et de la douleur non organique. Se reporter à la *décision n° 519/89* (1990), 13 W.C.A.T.R. 208. Par contre, quand un jury estimait qu'une pension accordée au titre de troubles organiques n'était pas suffisante pour indemniser un travailleur d'un état pathologique présentant des aspects non organiques, il ordonnait à la Commission de réévaluer le travailleur de manière à pouvoir l'indemniser de la douleur chronique ressentie et de toute dépendance possible à des produits pharmaceutiques. Se reporter à la *décision n° 671/90* (1990), 16 W.C.A.T.R. 284.

Les progrès accomplis vers une meilleure compréhension des troubles de la douleur chronique et de la fibromyalgie ne vont pas sans soulever des questions complexes. L'examen d'une de ces questions s'est soldé par une décision concluant que l'utilisation du barème des taux relatifs à l'invalidité attribuable à un traumatisme psychique pour établir le montant des indemnités au titre de la fibromyalgie avant le 3 juillet 1987 ne suppose pas qu'il doit y avoir preuve de troubles psychiques invalidants, plutôt que fibromyalgie, pour qu'il y ait admissibilité. Se reporter à la *décision n° 337/90* (9 août 1990). Dans un autre ordre d'idées, le traitement des cas de douleur chronique a été empreint d'une certaine confusion à la suite de l'adoption du critère relatif à la perturbation marquée de la vie. Comme toute autre pension accordée en application de la Loi d'avant 1989, les pensions accordées au titre de la douleur chronique visent à indemniser le travailleur de la diminution de sa capacité de gains. La perturbation marquée de la vie doit être considérée comme un aspect de la preuve parce qu'il est difficile d'évaluer un état subjectif tel que la douleur chronique; toutefois, la Loi d'avant 1989 ne permet pas d'indemniser le travailleur d'une telle perturbation. Se reporter à la *décision n° 865/89* (11 mai 1990).

Initialement, la Commission avait décidé que sa politique sur les troubles de la douleur chronique entrerait en vigueur le 3 juillet 1987. Par contre, dans la *décision n° 915A* (1988), 7 W.C.A.T.R. 269, le Tribunal a conclu que, pour des raisons de bonne administration, les indemnités accordées au titre de la douleur chronique devraient commencer à être versées à compter du 27 mars 1986 (date du début de l'instance d'annulation au Tribunal). Bien que, dans sa décision, le conseil d'administration ait conclu que de nombreuses dates pouvaient cadrer avec les objectifs de la *Loi sur les accidents du travail*, il a estimé qu'il n'était pas fondamentalement en désaccord avec le Tribunal. Sans exclure son droit d'élaborer des critères pouvant entraîner des résultats différents en matière de rétroactivité dans le contexte d'autres politiques administratives, le conseil d'administration a décidé d'accepter la date choisie par le Tribunal. Il a précisé qu'il avait été influencé par le temps déjà écoulé dans le processus et par le fait que les deux dates étaient relativement rapprochées. Vu les conclusions tirées lors de son étude, le conseil d'administration a estimé qu'il était inutile d'ordonner au Tribunal de réexaminer les *décisions n°s 915 et 915A*.

Une seule question soulevée dans la décision du conseil d'administration demeurait encore non réglée à la fin de 1990. Dans de nombreuses décisions étudiées par le conseil d'administration, le Tribunal avait accordé des indemnités d'invalidité temporaire au titre de la douleur chronique pour des périodes antérieures au 27 mars 1986. Le conseiller du conseil d'administration avait précédemment indiqué aux parties concernées qu'elles auraient l'occasion de soumettre leurs observations sur la façon dont la Commission devait exercer le pouvoir discrétionnaire lui permettant d'ordonner au Tribunal de réexaminer ces décisions en application de l'article 86n. À la fin de 1990, les parties avaient soumis leurs observations, et le conseil d'administration n'avait pas encore rendu de décision à l'égard de cette question.

Dans sa décision, le conseil d'administration a aussi ordonné au personnel de la Commission de passer en revue le barème des taux cliniques relatifs aux troubles de la douleur chronique ainsi que les barèmes des taux relatifs aux troubles mentaux attribuables au stress post-traumatique et à la fibromyalgie. Le conseil d'administration a aussi ordonné au personnel de la Commission d'examiner la durée de la période au cours de laquelle des indemnités d'invalidité temporaire devraient être payables au titre de la douleur chronique, et ce, en se fondant sur le test-seuil prévu dans la politique sur les troubles de la douleur chronique, test-seuil consistant à déterminer si la douleur persiste plus de six mois après la période normale de guérison.

Le 5 octobre 1990, le conseil d'administration a aboli le barème des taux relatifs aux troubles de la douleur chronique et l'a remplacé par le barème des taux relatifs aux troubles mentaux attribuables à des traumatismes psychiques. Le conseil d'administration a aussi décidé que ce barème, désigné sous le nom de *barème des taux relatifs aux traumatismes psychiques et aux troubles comportementaux*, s'appliquerait à la douleur chronique, à la fibromyalgie et aux invalidités attribuables à des traumatismes psychiques. Par la même occasion, le conseil d'administration a confirmé que "six mois après la période normale de guérison" devait s'entendre du moment où l'invalidité des travailleurs souffrant de douleur chronique et de fibromyalgie devait habituellement être évaluée mais que les décisions devaient déterminer le degré maximal de réadaptation médicale en se fondant sur des principes généraux afin de tenir compte des particularités de chaque cas.

C'est dans la *décision n° 145/89* que le Tribunal a accordé pour la première fois des indemnités au titre de troubles de stress chronique. Dans cette décision, le jury a procédé au test présenté pour examiner le cas d'un routier qui n'avait pas de traits de personnalité le prédisposant à ce genre de troubles et qui n'avait été soumis à aucun stress important dans sa vie personnelle. La preuve révélait l'existence de nombreux facteurs de stress professionnel, à savoir l'affectation à des longs parcours avec des co-hautfeurs inexpérimentés et l'exposition à plusieurs accidents de la route, dont un l'avait particulièrement perturbé. La preuve démontrait aussi que l'employeur avait dû se retirer des affaires parce qu'il manquait d'employés dignes de confiance après que d'autres routiers eurent cessé de travailler pour cause d'épuisement professionnel. Les symptômes du travailleur avaient disparu après qu'il eut cessé d'effectuer des longs parcours. Il existait aussi des opinions médicales à l'appui des arguments selon lesquels les lieux de travail avaient contribué à l'invalidité.

Le Tribunal a aussi accordé des indemnités au titre du stress chronique dans la *décision n° 684/89*. La travailleuse avait été employée dans un centre de détention où elle assurait la garde, le contrôle et la supervision de jeunes contrevenants. Ses conditions de travail avaient changé à la suite de l'adoption de nouvelles dispositions législatives qui avaient entraîné la venue de détenus plus âgés et plus agressifs manifestant des comportements criminels plus sérieux. La période de transition qui avait suivi l'adoption des dispositions législatives en question avait été marquée par plus d'hostilité et d'agitation. Le jury a conclu que les facteurs de stress reliés au travail avaient joué un rôle prédominant dans l'invalidité de la travailleuse. Il a aussi indiqué que l'examen des facteurs de stress présents dans la vie personnelle de la travailleuse ne constituait pas une violation injustifiée de sa vie privée.

Enfin, le Tribunal a été saisi du cas d'un sapeur-pompier qui alléguait souffrir d'épuisement professionnel après avoir travaillé pendant 20 ans à une caserne de pompiers dotée d'un personnel insuffisant et de stress à la suite du fusionnement de sa caserne avec une caserne plus grande. Dans la *décision n° 322/89* (19 novembre 1990), le jury a demandé d'autres observations en vue de déterminer, d'une part, si les décisions relatives à la gestion du personnel pouvaient être considérées comme des accidents indemnifiables et, d'autre part, quand les troubles mentaux devaient être considérés comme invalidants.

Douleur chronique et fibromyalgie

L'annexe C du *Troisième rapport* présente un examen assez détaillé de l'évolution du traitement des cas d'invalidité attribuable à la douleur chronique et à la fibromyalgie. Le 1^{er} juin 1990, le conseil d'administration de la Commission a publié les résultats d'une étude sur le sujet effectuée en application de l'article 86n de la Loi. Suit un résumé de la décision consécutive à cette étude portant sur les *décisions n° 915, n° 915A* et d'autres décisions connexes. Le résumé ci-après a pour but de situer dans leur contexte les cas de douleur chronique et de fibromyalgie dont le Tribunal est saisi afin d'en faciliter la compréhension. Pour en apprendre davantage sur le sujet, le lecteur devrait lire la décision du conseil d'administration. Cette décision est parue dans le volume 15 du W.C.A.T.R. (page 247).

Dans sa décision, le conseil d'administration indique que la Commission et le Tribunal sont essentiellement d'accord sur les modalités de traitement des cas de douleur chronique. La seule question qui faisait l'objet d'un différend au moment de l'étude était la date devant servir aux fins du versement rétroactif d'indemnités.

Le Tribunal est aussi saisi de cas de maladies professionnelles qui n'ont pas encore fait l'objet d'étude épidémiologique ou au sujet desquelles il existe peu de données de cette nature. Se reporter, par exemple, à la *décision* n° 1268/87 (1990), 16 W.C.A.T.R. 14, dans laquelle un jury examine le lien entre l'exposition à la B-naphthylamine et le cancer de la vessie, et à la *décision* n° 859/89 (1990), 16 W.C.A.T.R. 159, dans laquelle un jury examine l'exposition à des poussières et la maladie pulmonaire obstructive chronique. La *décision* n° 859/89 présente un examen intéressant des problèmes associés à la preuve épidémiologique en tenant compte du temps et des sommes nécessaires pour mener des études dignes de confiance.

Il incombe au Tribunal d'examiner les demandes relevant de la *Loi sur les accidents du travail* même si le corps scientifique n'a pas encore fait l'unanimité sur les causes d'une maladie. Pour se renseigner davantage à ce sujet, le lecteur peut se reporter aux *décisions* n° 1170/87 (2 mai 1990), 13 W.C.A.T.R. 44, et n° 681/89 (13 mars 1990).

Stress au travail

La question du stress au travail, qui avait été examinée dans des rapports annuels précédents, a fait l'objet d'une certaine couverture médiatique en 1990. La Commission élabore présentement une politique sur le stress chronique; entre temps, le Tribunal est appelé à trancher les cas de ce genre au fur et à mesure qu'ils se présentent.

En raison des problèmes de preuve relatifs à l'examen des demandes d'indemnités au titre du stress, le Tribunal avait indiqué dans quelques-unes de ses premières décisions sur le sujet qu'il convenait de mener une enquête spéciale à deux volets. On s'était ensuite demandé si cette enquête modifierait le fardeau de la preuve tel qu'il est entendu aux termes de la loi. Dans les cas plus récents, le Tribunal a tendance à affirmer qu'il convient d'imposer le fardeau de la preuve habituel et de déterminer selon la prépondérance des probabilités si les lieux de travail ont contribué de façon importante à l'invalidité. Se reporter aux *décisions* n° 145/89 (1990), 14 W.C.A.T.R. 74, n° 980/89 (1990), 13 W.C.A.T.R. 304, et n° 684/89 (1990), 16 W.C.A.T.R. 132, dans laquelle la question de la norme de preuve demeure non résolue.

La *décision* n° 980/89 expose les grandes lignes d'un test à trois volets conçu pour déterminer s'il existe un lien de causalité dans les cas de stress. Le jury auteur de cette décision a déclaré qu'il faut démontrer:

- 1) qu'il existe des troubles psychologiques invalidants et que ces troubles empêchent le travailleur de s'acquitter des fonctions de son emploi;
- 2) que l'invalidité est reliée au travail — en évaluant les différents facteurs de stress sur les lieux de travail tout en examinant s'ils sont habituels et s'ils affectent d'autres travailleurs;
- 3) qu'il existe une invalidité et que les lieux de travail y ont contribué de façon importante — en comparant les facteurs de stress dans la vie personnelle du travailleur et au travail.

Le lecteur peut obtenir de plus amples renseignements au sujet de la décision découlant de l'étude du conseil d'administration en se reportant à la partie de ce rapport consacrée à la douleur chronique.

QUESTIONS EXAMINÉES EN 1990

Conformément à la coutume établie dans le *Troisième rapport* et le *Rapport annuel 1989*, suit un aperçu des anciennes et des nouvelles questions juridiques, factuelles et médicales traitées en 1990. Il n'est malheureusement possible de donner qu'un aperçu de certaines questions. Les questions sont passées en revue sans ordre d'importance, et certaines présentent un intérêt particulier pour les employeurs.

Le lien entre le travail et la lésion indemnisable

Le *Rapport annuel 1989* faisait état du fait que le Tribunal avait continué à examiner et à préciser la notion de "lésion survenue du fait et au cours de l'emploi" — notion fondamentale dans le domaine des accidents du travail. Cette notion avait été examinée dans le contexte de cas faisant intervenir des situations factuelles difficiles telles que des bagarres, des crises cardiaques, des chutes inexplicables, l'abus de drogues et d'autres situations analogues.

Le Tribunal a poursuivi cette démarche en 1990, en redoublant d'intérêt pour le rôle de la clause de présomption. Se reporter aux *décisions* n° 24F (1990), 13 W.C.A.T.R. 1, n° 405/90 (1990), 16 W.C.A.T.R. 244, n° 351/90 (1990), 17 W.C.A.T.R. 143, et n° 224/90 (1990), 14 W.C.A.T.R. 310.

Maladies professionnelles

Les cas de maladies professionnelles, faisant intervenir des troubles invalidants attribuables à l'exposition à des produits ou à des procédés nocifs sur les lieux de travail, posent encore quelques-uns des plus grands défis auxquels le Tribunal soit confronté. Les troubles de ce genre sont indemnifiables lorsqu'ils correspondent à la définition de "maladie professionnelle" et aux dispositions connexes de la Loi ou à la composante incapacité de la définition de la définition du terme "accident".

La Commission élabore fréquemment des politiques pour faciliter le règlement des cas faisant intervenir des maladies professionnelles qui ont déjà fait l'objet d'études épidémiologiques. La *décision* n° 257/89 (1990), 14 W.C.A.T.R. 87, fournit un exemple intéressant du rôle du Tribunal dans l'examen de telles politiques. Cette décision traite de la politique régissant l'indemnisation des mineurs d'exploitations aurifères atteints du cancer du poumon. Après avoir examiné en détail la politique et la preuve épidémiologique sur laquelle elle s'appuie, le jury a conclu qu'il y avait admissibilité parce que, selon la preuve déposée, l'exposition réelle à des poussières était comparable à l'exposition ouvrant droit à des indemnités, et ce, même si le cas du travailleur ne s'insérait pas parfaitement dans la politique. Le Tribunal a le pouvoir discrétionnaire d'examiner les cas individuellement pour en déterminer le bien-fondé, et la politique de la Commission ne pouvait entraver ce pouvoir.

LA LOI 162: RÉPERCUSSIONS SUR LE TRIBUNAL

Les modifications apportées à la *Loi sur les accidents du travail* par la Loi 162 ont eu peu de répercussions sur la charge de travail du Tribunal, ce qui ne cesse de nous étonner. À la fin de 1990, exception faite de quelques questions transitionnelles touchant certains cas dont il avait déjà été saisi, le Tribunal n'avait été saisi que d'un cas relevant de la Loi 162 — un cas de renversement.

QU'À LE DERNIER MOT AUX TERMES DE L'ARTICLE 86n

En 1990, le conseil d'administration de la Commission a publié la décision résultant de sa deuxième étude en application de l'article 86n. Dans cette décision, il examine les *décisions nos 915* (1987), 7 W.C.A.T.R. 1, et 915A (1988), 7 W.C.A.T.R. 269, ainsi que nombre de décisions connexes portant sur l'application rétroactive de la nouvelle politique sur les troubles de la douleur chronique (ci-après, *étude des décisions nos 915 et 915A*).

Dans la *décision no 915*, le Tribunal avait conclu que les troubles invalidants de la douleur chronique étaient indémnifiables, et il avait infirmé l'approche de la Commission à cet égard. Dans la *décision no 915A*, le Tribunal avait conclu que les indemnités au titre de la douleur chronique accordées conformément à la *décision no 915* devaient être versées rétroactivement à compter du 27 mars 1986 — date à laquelle le Tribunal avait commencé à examiner la question de la douleur chronique.

Dans son *étude des décisions nos 915 et 915A* (1990), 15 W.C.A.T.R. 245, le conseil d'administration de la Commission a conclu qu'il n'y avait aucune raison de s'opposer au 27 mars 1986, eu égard aux circonstances entourant l'introduction de sa politique sur la douleur chronique. Il n'y avait donc pas lieu de renvoyer les *décisions nos 915 et 915A* au Tribunal pour qu'il les réexamine.

En ce qui concerne les cas ouvrant droit à des indemnités d'invalidité temporaire avant le 27 mars 1986 conformément à des décisions rendues par le Tribunal (décisions incluses dans l'étude), le conseil d'administration a conclu que la même date devait s'appliquer. La Commission a invité les parties concernées à lui indiquer, par voie d'observations écrites, si le conseil d'administration devait, à leur avis, exercer le pouvoir que lui confère l'article 86n et ordonner au Tribunal de réexaminer les décisions visées à la lumière des conclusions ressortant de l'*étude des décisions nos 915 et 915A*.

À la fin de 1990, les décisions rendues à l'égard de ces derniers cas demeuraient toujours en suspens. Le conseil d'administration n'avait pas encore émis de directive en application de l'article 86n à l'intention du Tribunal. Il est bon de noter que, dans son *étude des décisions nos 915 et 915A*, le conseil d'administration a accepté les principes énoncés dans la *décision no 42/89* (1989), 12 W.C.A.T.R. 85. Dans cette décision, le Tribunal interprète ses obligations à l'égard des ordonnances découlant des études en application de l'article 86n. (Se reporter au *Rapport annuel 1989*)

Les conseillers juridiques et les membres des jurys veillent au respect des principes de droit administratif exposés dans l'arrêt *Consolidated-Bathurst Packaging Ltd. c. Syndicat international des travailleurs du bois d'Amérique, section locale 2-69* (1990), 68 D.T.R. (4th) 524 (S.C.C.). Voici ces principes: les conclusions de fait du jury d'audience doivent être acceptées; les parties doivent avoir l'occasion d'émettre des observations au sujet de toute nouvelle question importante identifiée au cours de l'examen de l'ébauche et dont elles n'ont pas eu l'occasion de débattre au cours de l'audition du cas; ce sont les membres du jury d'audience qui doivent rendre la décision définitive.

En 1990, le Bureau du conseiller du président a cessé d'examiner systématiquement toutes les ébauches des vice-présidents à temps partiel. Un grand nombre des vice-présidents à temps partiel possèdent maintenant beaucoup d'expérience dans le domaine des accidents du travail et n'ont maintenant besoin que d'une aide ponctuelle. Le Tribunal a estimé qu'il convenait de modifier les modalités d'examen de façon à tenir compte de l'expérience des vice-présidents dans le domaine des accidents du travail et dans celui de la rédaction de décisions.

Un nouveau vice-président qui possède de l'expérience dans le domaine des accidents du travail doit soumettre ses 10 premières ébauches de décisions relatives à l'admissibilité et ses cinq premières ébauches portant sur des dispositions particulières de la Loi. Un vice-président qui ne possède pas d'expérience dans le domaine des accidents du travail doit soumettre ses 25 premières ébauches de décisions relatives à l'admissibilité et ses 10 premières ébauches portant sur des dispositions particulières de la Loi.

Une fois cette première étape de formation passée, les vice-présidents, qu'ils soient à temps partiel ou à plein temps, ne sont pas tenus de soumettre leurs ébauches pour examen, sauf lorsqu'un cas soulève des questions présentant de l'intérêt ou de l'importance pour le Tribunal dans son ensemble.

QUESTIONS MÉDICALES

En 1990, le Tribunal a continué à recruter des spécialistes de renom aux fins de la liste d'assesseurs médicaux prévue à l'article 86h de la Loi. Les assesseurs ont continué à participer aux travaux du Tribunal en fournissant des éléments de preuve médicale de grande qualité.

Le Tribunal a aussi eu recours aux conseils et à l'aide inestimables de ses conseillers médicaux principaux.

Les conseillers médicaux participent entre autres à des vérifications internes des décisions. Ces vérifications indiquent que les décisions du Tribunal contiennent dans l'ensemble à témoigner de sa compétence dans le traitement des questions d'ordre médical.

J'ai toujours accordé une importance particulière à la relation que le Tribunal entretient avec le corps médical, car c'est de cette relation que dépend en définitive la qualité des décisions rendues à l'égard des questions médicales. C'est avec plaisir que je rends compte du fait que cette relation demeure bonne, comme en fait foi la qualité de notre liste d'assesseurs.

L'Administratrice des appels est en fait le greffière du Tribunal. Elle fait rapport au Cabinet du président au sujet de l'inscription des cas au calendrier des audiences. Elle est responsable de l'organisation et de l'administration des audiences, ce qui inclut la coordination des déplacements et des locaux. Elle travaille aussi en étroite collaboration avec le Cabinet du président en ce qui concerne la répartition des cas entre les jurys. Le statisticien en chef a pour tâche de surveiller la production du Tribunal pour faire rapport au Cabinet du président et au personnel cadre et pour déceler tout problème ou toute nouvelle tendance à ce chapitre.

Le Cabinet du président se compose du président du Tribunal, de sa présidente suppléante et de leur personnel de soutien. Le Cabinet du président remplit les fonctions de direction du président. Ces fonctions sont présentement réparties entre le président et la présidente suppléante de la manière suivante. Le président travaille en collaboration avec sa conseillère juridique, le chef de l'information, le chef des finances et l'avocate générale. De plus, il veille aux nominations avec son adjointe principale. La présidente suppléante travaille en collaboration avec le chef de l'administration, l'administratrice des appels et le statisticien en chef. Elle travaille aussi en collaboration avec l'avocate générale en ce qui concerne les questions relatives au B.C.J.T. Enfin, elle a accepté de veiller à accélérer le travail de prise de décisions des vice-présidents et des membres du Tribunal.

En ce qui concerne les politiques et les formalités administratives présentant de l'importance sur le plan de la planification, le personnel cadre continue à travailler avec le comité de direction tripartite du Tribunal et l'Assemblée du Tribunal. Le Tribunal examine présentement la structure du comité de direction comme suite aux recommandations émises dans le rapport Coopers & Lybrand.

INFORMATIQUE

À la suite de la création du poste de chef de l'information, le Tribunal a passé en revue ses projets en matière d'informatique. À la fin de 1990, le Tribunal mettait au point un nouveau plan d'action prévoyant une augmentation considérable de la puissance de son système informatique et la mise en place d'un système automatisé de suivi des dossiers en 1991.

CHANGEMENTS APPORTÉS AUX MODALITÉS D'EXAMEN DES ÉBAUCHES DE DÉCISIONS

En 1990, les modalités d'examen des ébauches de décisions sont demeurées essentiellement les mêmes. Comme il a été indiqué dans les rapports précédents, cet examen a pour but d'assurer que les décisions ne sont pas rendues en vase clos, qu'elles respectent des normes de qualité uniformes à l'échelle du Tribunal et qu'elles forment autant que possible une jurisprudence cohérente. Dans la plupart des cas, l'examen est effectué par des conseillers juridiques, avec la participation occasionnelle du président.

LA NOUVELLE STRUCTURE HIÉRARCHIQUE DU TRIBUNAL

En 1989 et pendant une partie de 1990, le Tribunal a mis à l'essai une nouvelle structure hiérarchique au sein de son personnel cadre. Cette période d'essai s'est soldée par des changements permanents pendant la dernière moitié de l'année.

Le poste de directeur général a été aboli, et les responsabilités incombant habituellement au titulaire de ce poste ont été réparties entre les trois postes de direction énumérés ci-après.

Chef de l'information
Chef de l'administration
Chef des finances

La titulaire du poste de chef de l'information est responsable des publications et de l'exploitation de la bibliothèque du Tribunal. Elle assure aussi la planification stratégique, la conception, la maintenance et l'exploitation des systèmes informatiques du Tribunal. Elle relève directement du président du Tribunal.

La titulaire du poste de chef de l'administration est chargée de la planification et de l'entretien des locaux, de l'acquisition et de l'administration des fournitures et du matériel, de la gestion et de l'administration des services de soutien administratif, y compris les fonctions d'achat, ainsi que de la planification, de la mise en oeuvre et de l'administration des politiques en matière de ressources humaines. Elle veille aussi à ce qu'aucun des besoins administratifs du Tribunal ne passe inaperçu en raison des brèches créées par l'abolition du poste de chapeau que constituait le poste de directeur général. Elle relève du Cabinet du président du Tribunal.

Le chef des finances veille à la gestion et à l'administration de l'ensemble des finances du Tribunal. Il relève aussi du Cabinet du président.

Le personnel cadre comporte donc trois nouveaux postes, en plus des postes d'avocat général du Tribunal et de conseiller juridique du président.

L'avocate générale du Tribunal, qui rend habituellement compte directement au président, s'acquitte des fonctions juridiques associées à un tel poste. Elle dirige le Bureau des conseillers juridiques du Tribunal (BCJT), bureau où sont effectués les enquêtes et les travaux préparatoires en vue des auditions. De plus, elle gère les relations de travail entre le Tribunal et la Commission.

La conseillère juridique du président veille, au nom du président, à assurer le maintien de la qualité, de la cohérence et de l'utilité de la jurisprudence du Tribunal, en supervisant l'examen des ébauches de décisions. Elle conseille aussi le Cabinet du président au sujet des questions de droit administratif touchant le Tribunal, supervise et administre les formalités relatives au pouvoir de réexamen du Tribunal et conseille le président en ce qui a trait aux responsabilités qui lui incombent en vertu de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*.

Deux autres postes sont investis de fonctions de direction et relèvent du Cabinet du président. Il s'agit des postes d'administrateur des appels et de statisticien en chef, recherche et analyse.

L'EXAMEN COOPERS & LYBRAND

En 1989, le ministre du Travail alors en fonction avait commissionné un examen de la procédure d'appel du Tribunal dans le cadre de son livre vert sur les différents aspects du régime d'indemnisation des travailleurs. Confiée à la société Coopers & Lybrand, l'examen du Tribunal a été mené pendant l'été et l'automne 1989. Le rapport d'examen a été soumis au ministre du Travail et au président du Tribunal en mai 1990.

L'examen s'appuie en grande partie sur des interviews menées avec des personnes extérieures au Tribunal qu'avec des personnes en faisant partie. Les personnes interviewées étaient donc plus ou moins renseignées sur les modalités de fonctionnement et le rendement du Tribunal.

À la fin de 1990, le Tribunal n'avait pas encore fini d'évaluer les recommandations émises dans le rapport. Dans l'ensemble, le rapport confirme que le Tribunal a interprété son mandat correctement et qu'il le remplit avec succès. Le rapport fait état de la grande efficacité du Tribunal et du respect que l'équité et l'utilité de ses décisions inspirent aux travailleurs, aux employeurs et à la Commission.

En dépit de conclusions très positives au sujet du succès avec lequel le Tribunal remplit son mandat, le rapport contient de nombreuses recommandations qui, à mon avis, visent bien souvent les modalités de fonctionnement et la structure à l'origine des réussites constatées. Sans vouloir manquer de respect, je dois dire que, selon moi, les recommandations émises ne sont pas toujours aussi bien motivées que l'on aurait pu s'y attendre en l'occurrence.

La réaction immédiate que mes collègues et moi-même avons eue à l'égard des recommandations émises dans le rapport ressort dans la lettre que j'ai écrite au ministre du Travail pour accuser réception du rapport en mai 1990. Voici un extrait de cette lettre:

Parmi les recommandations émises dans le rapport, nombreuses sont celles que nous sommes déjà en voie de mettre en oeuvre, d'autres que nous accepterons volontiers et certaines autres qui méritent manifestement d'être examinées de près. Je m'interroge parfois sur l'opportunité de certaines constatations et sur les suggestions de changements visant la structure et les modalités de fonctionnement du Tribunal, et j'y reviendrai en temps et lieu.

En faisant référence à l'opportunité de certaines constatations contenues dans le rapport, je voulais exprimer notre surprise à l'égard de certaines critiques concernant le processus décisionnel du Tribunal. Ces critiques semblaient aller à l'encontre des réactions généralement positives qui nous parvenaient jusqu'en 1989 de nos contacts habituels au sein des groupes de travailleurs. Nous en sommes venus à nous demander si l'examen n'avait pas fait ressortir des opinions fondées sur d'anciennes perceptions des modalités de fonctionnement du Tribunal.

Vu les préoccupations susmentionnées, le Tribunal a estimé devoir mener de vastes consultations auprès des groupes de travailleurs et d'employeurs afin de vérifier leur perception des questions soulevées dans le rapport avant de se prononcer sur les recommandations émises. À la fin de 1990, le président du Tribunal et sa présidente suppléante en étaient au terme d'une série de réunions avec les principaux représentants des plus importants groupes de travailleurs et d'employeurs de toute la province.

Le ministre du Travail recevra une réponse détaillée en 1991.

En 1990, le Tribunal a été en mesure de déceler ce genre de problème plus fréquemment dès l'étape de la réception, et, grâce à une meilleure communication entre le personnel du SRND et les "demandeurs précoecs", il a été possible d'assurer le retrait de nombreux dossiers avant même de commencer à les traiter. Le retrait de ces dossiers permet de réduire au minimum les retards pour les demandeurs et d'utiliser le temps des décisionnaires à meilleur escient. Comme les dossiers ainsi retirés ne figurent pas dans les statistiques relatives aux dossiers fermés, la diminution enregistrée à ce chapitre par rapport à 1989 — environ 215 dossiers — traduit une plus grande efficacité, plutôt qu'une perte de productivité.

Une fois la diminution du nombre de dossiers fermés par rapport à 1989 redressée en tenant compte de l'efficacité accrue du SRND, la perte de productivité passe à environ 225 dossiers, ou 12 pour cent, au lieu de 28 pour cent. Toutefois, ce chiffre également donne une idée trompeuse du rendement du Tribunal étant donné que, de la diminution d'ensemble par rapport à 1989, une diminution de 75 dossiers provient de la complexité croissante des cas dont le Tribunal est saisi.

Avant 1990, le rapport entre le nombre de décisions rendues et le nombre de cas réglés par décision était relativement stable. En effet, le Tribunal rendait en moyenne 1,02 décision par cas. Le rapport n'est pas un pour un parce que certains cas font l'objet de plus d'une décision avant d'être réglés. Les cas complexes nécessitent souvent une ou plusieurs décisions provisoires.

En 1990, le rapport entre les décisions rendues et les cas réglés est passé à 1,10. Cette hausse reflète la complexité croissante des cas, complexité qui se manifeste dans les différents services du Tribunal. Si le rapport était demeuré à 1,02 comme en 1989, le Tribunal aurait réglé environ 75 cas de plus. La diminution du nombre de cas réglés, qui semble indiquer une perte de productivité par rapport à 1989, serait donc en réalité de 140 cas — une diminution de sept pour cent.

La perte de productivité du Tribunal peut aussi être analysée en comparant le nombre de décisions rendues. En 1990, le Tribunal a rendu 1 081 décisions, comparativement à 1 181 en 1989 — une diminution de 100 décisions, ou environ neuf pour cent. Un autre facteur a contribué à la diminution du nombre de dossiers fermés en 1990. Il s'agit de l'augmentation du nombre d'auditions nécessaires pour régler chaque cas. Il a fallu en moyenne 1,08 audition pour régler un cas en 1990, comparativement à 1,05 en 1989. (Des auditions supplémentaires sont nécessaires lorsqu'un cas est trop complexe pour qu'un jury l'entende dans les délais prévus.) En conséquence, le nombre d'auditions permet peut-être d'estimer plus exactement le rendement du Tribunal. En 1990, le Tribunal a procédé à 1 163 auditions — sept pour cent de moins qu'en 1989.

Quelle soit de sept pour cent ou de neuf pour cent, la perte de productivité enregistrée en 1990 est facile à expliquer car elle correspond à peu près à la production annuelle d'un jury à plein temps. Le Tribunal a été confronté à des circonstances telles qu'il a pour ainsi dire été privé d'environ deux jurys à plein temps pendant toute l'année. Des postes ont été vacants pendant de longues périodes en raison de départs pour la retraite et de congés de maternité, et la nomination de remplaçants a été compliquée et ralentie par les élections provinciales, par le changement de gouvernement et par la période de transition qui a suivi l'adoption d'une nouvelle procédure de nomination. À mon avis, il est tout à l'honneur du personnel et des décisionnaires du Tribunal que la productivité n'ait pas diminué davantage.

TABLEAU 1

STATISTIQUES COMPARATIVES SUR LA CHARGE DE TRAVAIL

	Au 31 décembre 1989	Au 31 décembre 1990
Dossiers au stade préalable à l'audition*	1 134	1 082
Dossiers au stade postérieur à l'audition:		
- En attente	65	68
- Menés à terme	138	135
- À l'étape de la rédaction	234	217
Dossiers au stade postérieur à l'audition	437	420
TOTAL**	1 571	1 502

* Ces chiffres incluent les dossiers en attente faisant intervenir des troubles de la douleur chronique (180 dossiers au 31 décembre 1990) et les demandes ultérieures à des décisions (156 demandes au 31 décembre 1990).

** Ces chiffres n'incluent pas les dossiers non classifiés par catégories (12 dossiers au 31 décembre 1990) et les dossiers en cours de fermeture (33 dossiers au 31 décembre 1990).

Le Tribunal a fermé encore une fois plus de dossiers qu'il n'en avait reçus. Il avait un inventaire de 1 502 dossiers à la fin de 1990, comparativement à 1 571 à la fin de 1989. Le lecteur peut obtenir de plus amples renseignements au sujet de l'inventaire et de sa composition au 31 décembre 1990, comparativement à 1989, en se reportant au tableau d'accompagnement (voir le tableau 1). La réduction nette d'inventaire de 69 dossiers enregistrée en 1990 est malheureusement décevante par rapport à celle de 400 dossiers enregistrée en 1989. Qui plus est, cette réduction a été possible seulement parce que le Tribunal a reçu environ 100 dossiers de moins qu'en 1989.

Le tableau de la page 28 indique clairement une baisse de 28 pour cent au chapitre des dossiers fermés, par rapport à 1989 — une perte de productivité apparente de 440 dossiers (voir le tableau 2).

Cependant, comme ces chiffres ne représentent pas fidèlement le rendement du Tribunal au cours de l'année écoulée, il est important de les placer dans leur contexte. Environ 215 des 440 dossiers traités en moins par rapport à 1989 s'expliquent paradoxalement par la plus grande efficacité du Service de réception des nouveaux dossiers (SRND).

Le Tribunal reçoit toujours un grand nombre de dossiers ne relevant pas de sa compétence. Il s'agit généralement de cas soulevant certaines questions à l'égard desquelles la Commission n'a pas encore rendu de décision définitive. Ces cas finissent par être retirés lorsque le Tribunal décide le problème de compétence. Cependant, ils sont inclus dans les statistiques relatives à la réception des nouveaux dossiers et, comme ils sont habituellement traités assez rapidement, la plupart d'entre eux figurent dans les statistiques de fin d'année relatives aux dossiers fermés sans audition.

Le Tribunal est aux prises avec un arriéré persistant à l'étape de la rédaction des décisions. En 1990, environ 9,1 pour cent des cas parvenus à cette étape y avaient passé plus de 12 mois. Nous espérons pouvoir réduire considérablement cet arriéré au cours des mois à venir, mais l'expétience des cinq dernières années semble indiquer qu'il est très difficile d'éviter qu'un certain pourcentage de décisions ne soient soumis à de longs retards. Il est de plus en plus difficile de lutter contre ce problème à mesure que les cas complexes deviennent proportionnellement plus nombreux.

Les cas en souffrance ont peu d'importance du point de vue statuts; toutefois, ils sont éprouvants pour les parties concernées et décourageants pour les décisionnaires et le personnel du Tribunal. En outre, ils nuisent considérablement à la réputation du Tribunal. Compte tenu de la constance de ce problème et du fait que nous avons, selon moi, demandé plus qu'il n'est raisonnable de nos vice-présidents à plein temps, j'en suis venu à la conclusion qu'il nous faut plus de décisionnaires et j'ai recommandé la création de deux nouveaux postes de vice-présidents à plein temps dans la présentation budgétaire de 1991.

Les vice-présidents ont continué, à mon avis, à exceller dans leurs fonctions. Leurs collègues, les membres représentant les travailleurs et ceux représentant les employeurs, et le personnel du Tribunal, qui rend leur travail possible, ont également fait preuve d'excellence dans l'exécution de leurs tâches. Il faut toutefois souligner que les vice-présidents portent un fardeau de rédaction et d'analyse particulièrement lourd.

C'est aux vice-présidents qu'il incombe de rédiger les décisions. En 1990, il avait été convenu qu'un objectif annuel de 100 auditions par vice-président à plein temps était raisonnable aux fins de planification. Il s'agissait là du même objectif que celui visé en 1989. Etant donné que le Tribunal accorde très peu d'ajournements, chaque vice-président à plein temps pouvait donc s'attendre à rédiger environ 90 décisions annuellement. Exception faite de l'arriéré mentionné précédemment, la rédaction des décisions s'est poursuivie dans la ponctualité, et ce, malgré la pression considérable caractérisant cette étape du traitement des dossiers.

En 1990, le temps moyen de rédaction des 1 081 décisions rendues a été de 14,2 semaines. Toutefois, en éliminant les 57 décisions rendues plus d'un an après la date de la dernière audition, le temps moyen de rédaction des 1 024 décisions restantes passe à 10,3 semaines, ce qui représente plus fidèlement le temps de rédaction d'une décision rendue à l'égard d'un cas sans complication.

Je considère ces temps de rédaction comme acceptables. Ils sont comparables à ceux de 1988 mais supérieurs à ceux de 1989. Le temps moyen de rédaction de toutes les décisions était de 7,5 semaines en 1989. L'augmentation du temps moyen de rédaction par rapport à 1989 résulte peut-être d'une erreur statistique. Mes collègues et moi-même avons l'impression que le rythme de rédaction était généralement bon en 1990, compte tenu de la complexité des cas traités.

RAPPORT DU PRÉSIDENT DU TRIBUNAL

LE RENDEMENT DU TRIBUNAL ÉVALUATION PAR LE PRÉSIDENT

Le Tribunal a continué à s'acquitter de ses responsabilités en entendant et en tranchant les appels interjetés contre les décisions de la Commission des accidents du travail. Il a traité avec les travailleurs et les employeurs de manière équitable et objective, conformément au principe de la primauté du droit, et ses décisions, soigneusement motivées, ont continué à contribuer à l'évolution des politiques sur lesquelles s'appuie le régime d'indemnisation. Il a accompli de nouveaux progrès en vue d'une meilleure efficacité mais à un rythme plus lent qu'en 1989.

L'objectif de traitement complet de quatre mois demeure encore à atteindre. En 1990, un cas sans complication mettait en moyenne un peu moins de huit mois à franchir toutes les étapes de traitement.

Il faut toutefois souligner que la restructuration du Bureau des conseillers juridiques du Tribunal (BCJT), décrite dans le *Rapport annuel 1989*, s'est poursuivie pendant une bonne partie de 1990 (notre nouvelle avocate générale n'est entrée en fonction qu'en décembre 1989). Les moyennes de 1990 tiennent donc compte d'un artère constant au BCJT pendant cette période. À mi-chemin au cours de l'année, le BCJT avait repris corps et, à la fin de l'année, les temps de traitement y étaient considérablement plus courts.

Cette amélioration peut être illustrée par le fait que 50 pour cent (532 dossiers) des 1 069 dossiers reçus au cours des huit premiers mois de 1990 ont été traités en quatre mois et cinq jours en moyenne avant que l'année ne s'achève. Ces dossiers comprenaient 156 cas d'admissibilité qui ont été traités en un temps moyen de six mois.

À la fin de l'année, les travailleurs et les employeurs qui se présentaient au Tribunal avec un cas d'admissibilité sans complication prêt à être entendu pouvaient compter obtenir une audition et une décision dans les quatre ou cinq mois suivant la réception des documents de la Commission au Tribunal. (Dans ce contexte, un cas sans complication est un cas qui ne nécessite pas d'enquête médicale supplémentaire, ne soulève pas de question juridique nouvelle et, du fait du consentement du travailleur, ne donne pas lieu à l'examen du droit de l'employeur à l'accès au dossier dressé par la Commission.)

INTRODUCTION

Le Tribunal d'appel des accidents du travail est un tribunal tripartite qui a été institué en 1985 pour entendre les appels interjetés contre les décisions de la Commission des accidents du travail. Le Tribunal est une institution distincte et indépendante de la Commission.

Le présent document, qui renferme le rapport du président du Tribunal et celui du Tribunal, est publié à l'intention du ministre du Travail et des différents groupes intéressés au Tribunal. Le lecteur y trouvera une vue d'ensemble du fonctionnement du Tribunal en 1990 et un examen de certaines questions susceptibles de présenter une importance particulière pour le ministre et les groupes intéressés.

Il s'agit du deuxième rapport intitulé "Rapport annuel" et portant sur une année civile. Les trois premiers rapports ont été expressément intitulés *Premier rapport*, *Deuxième rapport* et *Troisième rapport* parce qu'ils servaient surtout à relater les faits saillants des années de formation du Tribunal. Ces rapports portent respectivement sur les périodes allant du 1^{er} octobre 1985 au 30 septembre 1986, du 1^{er} octobre 1986 au 30 septembre 1987 et sur la période de quinze mois allant du 1^{er} octobre 1987 au 31 décembre 1988.

Comme il a été indiqué précédemment, ce rapport annuel renferme en fait le rapport du président et celui du Tribunal. Dans son rapport, le président émet certaines observations personnelles, expose ses vues et exprime ses opinions. Dans le rapport du Tribunal, le lecteur trouvera un aperçu des activités du Tribunal et de ses affaires financières ainsi que des progrès réalisés dans les domaines administratif et procédural.

22	Avocats
22	Bureau de liaison médicale
24	Travailleurs juridiques, stade postérieur à l'audience
24	SERVICE DE L'INFORMATION
24	Publications
25	Faits saillants concernant la bibliothèque
26	SERVICE DE L'INFORMATIQUE
26	SERVICES EN FRANÇAIS
27	SOMMAIRE DES STATISTIQUES
27	DE FIN D'ANNÉE
27	Introduction
27	Aperçu
28	Dossiers reçus et dossiers fermés
31	Productivité en 1990
35	Représentation lors des audiences
35	Dossiers en inventaire
36	QUESTIONS FINANCIÈRES

ANNEXE A

41	VICE-PRÉSIDENTS ET MEMBRES EN FONCTION EN 1990
43	VICE-PRÉSIDENTS ET MEMBRES — RENOUVELLEMENTS DE MANDATS
44	VICE-PRÉSIDENTS ET MEMBRES — EXPIRATIONS DE MANDATS ET DÉMISSIONS
44	NOMINATIONS EN 1990
46	PERSONNEL CADRE
47	CONSEILLERS MÉDICAUX

ANNEXES B, C, D – Rapports des vérificateurs

49	ANNEXE B
53	ANNEXE C
57	ANNEXE D

Table des matières

INTRODUCTION	v
RAPPORT DU PRÉSIDENT DU TRIBUNAL	

LE RENDEMENT DU TRIBUNAL:	1
ÉVALUATION PAR LE PRÉSIDENT	

L'EXAMEN COOPERS & LYBRAND	5
----------------------------	---

LA NOUVELLE STRUCTURE	
HIÉRARCHIQUE DU TRIBUNAL	6

INFORMATIQUE	7
--------------	---

CHANGEMENTS APPORTÉS AUX	
MODALITÉS D'EXAMEN DES ÉBAUCHES	
DE DÉCISIONS	7

QUESTIONS MÉDICALES	8
---------------------	---

LA LOI 162: RÉPÉRCUSSIONS SUR LE TRIBUNAL	9
---	---

QU'IL A LE DERNIER MOT AUX	
TERMES DE L'ARTICLE 86n	9

QUESTIONS EXAMINÉES EN 1990	10
-----------------------------	----

Le lien entre le travail et la lésion indemnisable	10
Maladies professionnelles	10
Stress au travail	11

Douleur chronique et fibromyalgie	12
-----------------------------------	----

Évaluations aux fins de pension	15
---------------------------------	----

Distinction entre travailleur et exploitant indépendant	16
---	----

Transfert des coûts entre employeurs	16
--------------------------------------	----

Tarification par incidence	16
----------------------------	----

Cotisations de démerite	17
-------------------------	----

La Charte canadienne des droits et libertés	17
---	----

Autres	18
--------	----

RÉVISIONS JUDICIAIRES	19
-----------------------	----

LE RAPPORT DU TRIBUNAL

LA PROCÉDURE D'APPEL	21
----------------------	----

VICE-PRÉSIDENTS, MEMBRES	
ET PERSONNEL CADRE	21

BUREAU DES CONSEILLERS	
JURIDIQUES DU TRIBUNAL	21

Service de réception des nouveaux dossiers	21
--	----

Rédacteurs de descriptions de cas	21
-----------------------------------	----

Travailleurs juridiques, stade préalable	
à l'audience	22

RAPPORT ANNUEL 1990

Tribunal d'appel des accidents du travail (Ontario)

505, avenue University

7^e étage

Toronto (Ontario)

M5G 1X4

ISSN: 1181-6031

© 1991

Rapport annuel 1990



Tribunal d'appel
des accidents du travail
Workers' Compensation
Appeals Tribunal

CA20N
L 95
-R28

Government
Publications



Workers' Compensation Appeals Tribunal
Tribunal d'appel des accidents du travail

ANNUAL REPORT

1992 AND 1993

1991 bound with 1994-1995/96

ANNUAL REPORT 1992 AND 1993



Ontario Workers' Compensation Appeals Tribunal
505 University Avenue, 7th Floor
Toronto, Ontario
M5G 1X4

ISSN: 1181-6031

© 1994

Contents

INTRODUCTION	v
REPORT OF THE TRIBUNAL CHAIR	
THE TRIBUNAL'S PERFORMANCE	1
THE DEVELOPING CASELOAD PROBLEM	1
The Present Caseload	1
Portents of Caseload to Come	3
Increasing Complexity	4
WCAT's Response to the Caseload Problem	4
THE TRIBUNAL'S COST-CUTTING PERFORMANCE	5
Re-organization of Public Access to Decision Database	5
In-house Production of W.C.A.T. Reporter	5
Increased Subscription Fees	5
Court Reporters	5
WCB Transcripts	6
Reduced Expenditures On Supplies and Office Equipment	6
Change in Scheduling Strategies	6
Withdrawal Initiatives	6
Pre-hearing Conferences in Out-of-Toronto Hearings	7
Changes to Case Description Formats	7
Strategies for Shortening the Time Required to Write Reasons	7
Space	8
Postponement of the Second Phase of the Case Tracking System	8
Social Contract Arrangements	8
MEMBERS' CODE OF PROFESSIONAL RESPONSIBILITY	9
WCAT HARASSMENT POLICY	10
UNION CERTIFICATION	10
ALTERNATE CHAIR	10
DRAFT-DECISION REVIEW AND THE INSTITUTIONALIZING OF TRIBUNAL DECISIONS	10
WCAT DECISIONS AND WCB POLICY	11
HIGHLIGHTS OF THE 1992-93 CASE ISSUES	12
Re-employment Under the 1990 Act	13
Employment Benefits Under the 1990 Act	14
Vocational Rehabilitation	15
Occupational Stress	15
Occupational Disease	16
Experience Rating of Employers	17
Associated Employers	18
Chronic Pain and Fibromyalgia	18
Canadian Charter of Rights	19
Other Issues	20
JUDICIAL REVIEW ACTIVITY	20
Other Matters	21

THE TRIBUNAL REPORT

THE APPEAL PROCESS	23
VICE-CHAIRS, MEMBERS AND STAFF	24
TRIBUNAL COUNSEL OFFICE	24
Intake	24
Case Description Writers	25
Pre-hearing Legal Workers	25
Lawyers	25
Post-hearing Legal Workers	25
Medical Liaison Office	26
INFORMATION DEPARTMENT	27
Library Activities	27
Publications	28
SYSTEMS DEPARTMENT	30
New Computer System	30
Case Tracking	30
Other PC Based Applications	31
Information Technology Security Guidelines	32
Help Desk	32
Minicomputer Performance	32
Computerized Accommodations for Disabled Members	32
STATISTICAL SUMMARY	33
Cases Received	33
Cases Closed	33
Remaining Inventory	34
Case Completion Times	34
Hearings and Decisions	34
FINANCIAL MATTERS	35

APPENDIX A

GUIDELINES FOR REVIEW OF DRAFT DECISIONS	45
--	----

APPENDIX B

VICE-CHAIRS AND MEMBERS IN 1992-93	49
VICE-CHAIRS AND MEMBERS ---- RE-APPOINTMENTS	51
VICE-CHAIRS AND MEMBERS ---- EXPIRED APPOINTMENTS AND RESIGNATIONS	52
NEW APPOINTMENTS DURING 1992-93	52
SENIOR STAFF	53
MEDICAL COUNSELLORS	53

APPENDIX C

AUDITORS' REPORTS AND FINANCIAL STATEMENTS	55
--	----

INTRODUCTION

The Workers' Compensation Appeals Tribunal is a tripartite tribunal established in 1985 to hear appeals from the decisions of the Ontario Workers' Compensation Board. It is a separate and self-contained adjudicative institution, independent of the Board.

This Report is the Tribunal Chair's and the Tribunal's annual report to the Minister of Labour and to the Tribunal's various constituencies. It describes the Tribunal's operational experience during the reporting period and covers particular matters which seem likely to be of special interest or concern to the Minister or to one or more of the Tribunal's constituencies. The reporting period for this report is the two-year period from January 1, 1992, to December 31, 1993.

An "annual" report covering a two-year period is, of course, a novelty. The resort to a two-year reporting strategy on this occasion was motivated by considerations of expediency and cost. Writing and producing the Annual Report has always been a significant burden on this Tribunal's administrative resources, and in 1993 the competition for those resources was especially acute. When preparation of the 1992 annual report fell behind its schedule to the point where it became clear that it would not be available until September or October of 1993, it seemed, from a resources and cost point of view, sensible to merge the 1992 report with the 1993 report.

This Report comprises, in effect, two reports: the Report of the Tribunal Chair and The Tribunal Report. The Report of the Tribunal Chair reflects the personal observations, views and opinions of the Chair. The Tribunal Report covers the Tribunal's activities and financial affairs, and developments in its administrative policy and process.

REPORT OF THE TRIBUNAL CHAIR

THE TRIBUNAL'S PERFORMANCE

Through 1992 and 1993 the Tribunal's appeal procedures and process continued to meet with general acceptance, its expenses remained within approved budgets and it succeeded in responding well to the cost-cutting pressures implicit in this era of radical fiscal restraint. The Tribunal also continued to produce its usually high quality of decisions. We have, however, a burgeoning caseload problem which has already caused some increase in our turnaround times.

Given the challenges the caseload increases are already presenting and the serious difficulties they seem likely to pose in the near future — particularly in this time of radical fiscal restraint — it is important that the Minister and the Tribunal's constituencies be aware of the possible shape and the probable causes of what seems likely to become in the not so distant future something of a caseload crisis.

THE DEVELOPING CASELOAD PROBLEM

The Present Caseload

The main features of the caseload growth as it is being experienced at the end of 1993 may be summarized as follows.

1. From 1988 through to the end of 1991, the Tribunal experienced a stable caseload intake (about 1,500 to 1,600 cases a year). The major amendments to the *Workers' Compensation Act* in 1989 (Bill 162) had been expected to produce increased levels of appeals but by the end of 1991 (the last reporting period) these had not yet materialized. However, the impact of those amendments began to be felt in 1992 and has continued through 1993.
2. The caseload increases delivered to the Tribunal a total 12-month intake that is 36 per cent above the traditional intake in 1991.
3. A chart showing the month-by-month intake for 1991, 1992 and 1993, and a graph of the trend lines in 1991 as compared to 1993 are attached (Figures 1 and 2, p. 2). The caseload lines are trending upwards and there is every reason to believe that what has turned up in the data so far is only the forerunner of even greater increases to come.
4. If we project the 1993 trend line to the end of 1994 that is, if only the same *rate* of increase is experienced in 1994 as was experienced in 1993, our 1994 intake will total 2,532 cases — *62 per cent* more than the 1991 intake. If, as seems possible from the analysis of outside factors set out below, the rate of increase were not to remain steady but to climb, we could very quickly be looking at a 1994 intake figure that was *double* that of 1991.
5. The impact the Tribunal has already experienced as a result of the caseload increases that have materialized to date may be seen in various indicators. The Tribunal's total inventory of cases — the number of cases lodged at various stages in the Tribunal's processes from initial intake to file closing — was 1,320 at the end of 1991, and will be 1,700 at the end of 1993 (a 28.5 per cent increase). The number of cases in the post-hearing or decision-writing stage of the Tribunal's processes was 525 at the end of 1991 and will be 650 at the end of 1993 (a 24 per cent increase).

Cases Received			
	<u>1991</u>	<u>1992</u>	<u>1993</u>
January	132	111	135
February	110	235	168
March	101	152	204
April	140	129	157
May	157	148	195
June	135	162	200
July	182	162	188
August	116	134	183
September	114	144	168
October	139	137	173
November	117	145	194
December	117	145	185
TOTAL	1560	1804	2150
(Average)	130	150	179

Figure 1 -- TOTAL INCOMING CASELOAD BY MONTH

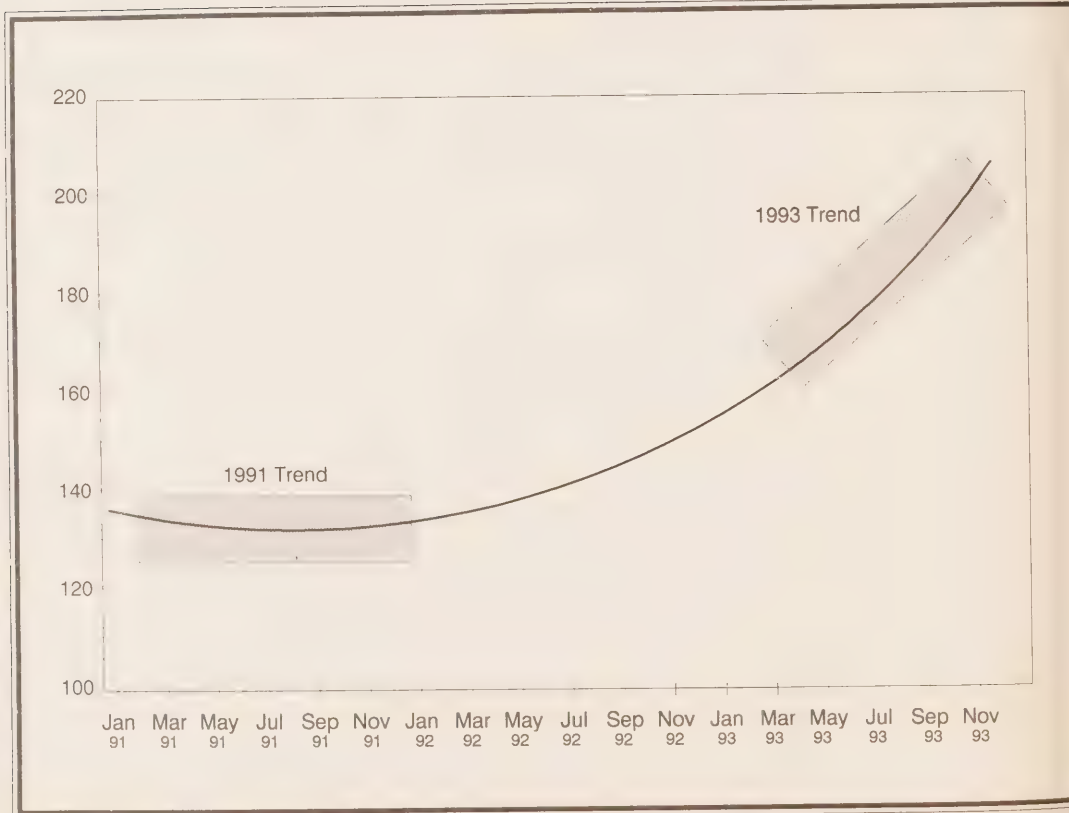


Figure 2 -- TREND ANALYSIS OF INCOMING CASELOAD

6. We are not currently experiencing any backlog in the sense of blocks of cases on which no work is being done, but the extra work generated by the increased caseload (Tribunal Counsel Office staff are experiencing, for instance, individual caseloads that are 30 per cent to 40 per cent higher than they were two years ago) is resulting in a general slowing of the processes. Cases in which final decisions were released at the end of 1993 had spent on average 20 per cent more time in the Tribunal's system than cases in which the final decisions were released at the end of 1992.

Portents of Caseload to Come

That we are seeing in these figures only the beginning of what could become a major caseload crisis is evident from a number of significant upstream events which seem very likely to generate even larger increases in the caseload intake in 1994 and beyond. These events are as follows:

1. There has been a leap in adjudication activity at the WCB in 1993. The Decision Review Branch (DRB) *doubled* its decision output in 1993 as compared to its usual production levels. The Hearings Officer and Re-employment Branch appeals were *65 per cent* over their usual levels, portending unusually high decision production in 1994.

(There is some reason to think that this is a short-term production increase, as it reflects a determined effort by the WCB to reduce DRB backlogs that had reached unacceptable levels, and comes at a time when the number of incoming claims at the WCB is continuing to drop. However, the appeals pattern for the post Bill 162 benefits (wage loss, supplements, and non-economic loss awards) is not yet established and there is a potential for a significant increase in the number of appeals per case as compared to the pre-1989 era. Also, with new advocacy resources (see below), and a growing number of areas where the Board is continuing to apply interpretations of the Act which it is known will be rejected at WCAT (see also below), there is cause to expect that the proportion of cases that will be appealed will go up.)

2. Hearings and Re-employment Branch decisions are the immediate source of the bulk of the Tribunal's caseload. But because of the time it typically takes for these decisions to turn up in appeals at WCAT, it is apparent that the WCB's 1993 production increases will not be significantly reflected in WCAT's 1993 intake statistics. That particular wave may be expected to reach the Tribunal during 1994 and 1995.
3. It is well understood that one of the important determinatives of WCAT's caseload has always been the limitations in the system's advocacy resources. There has always been a proportion of cases that have been waylaid on their way to the Tribunal through being parked on the waiting lists of advocacy centres. Four notable events relative to the advocacy resources have significant implications for WCAT's caseload — at least in the near term.

First, the Ontario Federation of Labour (OFL) has taken up the training of workers' compensation advocates in a major way. With full-time staff, an earmarked budget of \$700,000 a year and additional support from various unions, regular courses first offered in February 1991, have to date graduated 375 union people from their third-level courses. Ninety-five per cent of these are new additions to the advocacy pool.

OFL training of new advocates may be expected to impact directly on the Tribunal's caseload intake as appeals previously located in the advocacy backlogs now find their way into the hands of these new advocates. It is understood, for instance, that with the assistance of the OFL, the Office of the Worker Adviser (OWA) is now routinely referring all cases involving unionized injured workers to union advocates for representation.

Secondly, in response to extraordinary caseload pressures, the OWA was granted what in these times was an unprecedented Treasury-Board-approved, in-year budget increase in 1993.

Thirdly, that increase included \$450,000 of new core funding for non-union groups of injured workers. This core funding may be expected in due time to produce further advocacy resources, as well as enhanced awareness of appeal rights amongst non-union workers.

Fourthly, we are advised that beginning in 1994, the OWA will be embarking on a new strategy of renewed commitment to accepting only cases which the Office is equipped to handle in a reasonable time. Waiting lists (which in some offices currently are as long as 28 months) are to be pared, with workers who cannot be represented being encouraged and assisted to pursue their appeals themselves.

It is impossible to predict the full consequences for the Tribunal of this change in OWA policy, but we have to expect that some significant proportion of the cases in the present backlogs will now make their way to the Tribunal ahead of the schedule that would have pertained prior to that change in policy. These promise also to be cases that will present extra complication for the Tribunal by reason of the absence of professional representation.

Increasing Complexity

The developing caseload problem in the appeals system generally, and at the Tribunal in particular, is also not just a function of increased numbers of cases. We are, at the same time, experiencing a marked increase in the average complexity of appeal cases.

The major influence here is the nature of the issues arising under the Bill 162 reforms, with the re-employment cases being particularly troublesome from this point of view. The increased complexity shows up in the Tribunal's data as increases in the average number of hearings required to dispose of a case, increased numbers of days for particular hearings, a higher percentage of cases requiring post-hearing procedures, and longer decision-making processes on average.

WCAT's Response to the Caseload Problem

In the light of the increase in caseload intake which the Tribunal is actually experiencing, and the high probability of much more serious increases to come, it was obvious the post-1993 budget submission could not be based on a business as usual approach. The Tribunal is at a new point of departure, and, in the Chair's view, measures of a different quality will be necessary.

It remains a fact, however, that the ultimate, actual effect of these upstream events on the Tribunal's caseload cannot be calculated with certainty. And, in this era of radical fiscal restraint, the Chair believes that addressing only caseload problems that have actually materialized is the only feasible strategy. This strategy implicitly contemplates periods of transition when the Tribunal's capacity to cope will, in point of fact, be outrun by rapidly developing caseload increases. And, during these periods of adjusting production capacity to new realities, case delays may be experienced that would otherwise be unacceptable. However, it seems to the Chair that this is an unavoidable cost of prudent fiscal management in an era of restraint that cannot be avoided.

The Chair believes, therefore, that this new caseload situation must be addressed on a gradual basis. For 1994, he will be proposing a relatively conservative budget increase that would give the Tribunal a reasonable prospect of coping with the increased caseload already arriving at the Tribunal while holding the additional delays within reasonable bounds. He acknowledges, however, that the need for a more radical response may well become clear — even before the end of 1994.

THE TRIBUNAL'S COST-CUTTING PERFORMANCE

In this era of unprecedented fiscal restraint and radical constriction of public service budgets, an accounting of the Tribunal's response to these new realities is obviously indicated. The following is a list of the most prominent measures, most of which were initiated during 1993.

Re-organization of Public Access to Decision Database

WCAT's full-text electronic database has in the past been available through a customized database provided and maintained by Southam Electronic Publishing's *Private File Service*.

In 1993, we negotiated a contract with Southam to move the database into its commercial service, *Infomart Online*, thus eliminating the substantial annual fee we had paid in respect of the customized database.

In-house Production of W.C.A.T. Reporter

The year 1993 marked the end of our publication contract with Carswell and the beginning of the in-house production of the *W.C.A.T. Reporter*. There will be no change in the look of the Reporter other than the removal of the Carswell name, but all production work with the exception of the actual printing will now be done by the Tribunal's Publications Department. The first volume to be produced under this new arrangement will be volume 28 which will be released in April 1994.

The move to in-house production will substantially reduce the cost of producing the *Reporter*.

Increased Subscription Fees

We have embarked on a three-year schedule of increases in our publication charges that is designed ultimately to have the Tribunal in a full cost-recovery position with respect to its publications.

Court Reporters

We have decided to experiment with the elimination of court-reporter services for most hearings held at the Tribunal's offices in Toronto. The reporters will be replaced by recording equipment operated by panel members. By the end of 1993, these arrangements were nearing completion. It is expected that the first taping of hearings will begin early in 1994. If the experiment proves successful in Toronto, we plan to then extend it to out-of-Toronto hearings. The ultimate savings are difficult to predict with confidence but are potentially significant.

WCB Transcripts

WCAT's long-standing policy of automatically ordering transcripts of WCB Hearings Officers' hearings in every appeal was discontinued in July 1993. They are now being ordered on an as-needed basis. This change will generate substantial savings in 1994.

Reduced Expenditures On Supplies and Office Equipment

In 1991, we were released from the obligation to use central, government-established sources for certain categories of supplies. We have taken full advantage of the resulting flexibility, and in 1992 and 1993 stringent competitive sourcing by the Tribunal's Chief Administration Officer and her staff, coupled with a redoubling of efforts to minimize and economize, has led to a substantial reduction in the Tribunal's expenditures on supplies and equipment.

Change in Scheduling Strategies

The Scheduling Department was the first section of the Tribunal to be seriously overburdened by the increasing caseload. The Appeals Administrator's review of the situation persuaded the Tribunal that it could no longer afford to be in the business in every case of negotiating with the parties for the establishment of a hearing date.

In November 1993, we began experimenting with a different strategy. The Intake Department makes an initial unilateral selection of a hearing date (from a roster of dates supplied by the Scheduling Department) and at the point when the Case Description is distributed advises both the representatives and the parties that their hearing has been fixed for that date. (The date specified is usually about four months ahead of the distribution date.)

The parties or representatives are free to advise the Tribunal that the date is not convenient. If they do so, at that point the Scheduling Department undertakes the negotiation of an ad hoc date. The change, however, puts parties' representatives in the position of having to say no rather than yes — and of having to explain a "no" to their clients.

The experience so far indicates that the new strategy may substantially reduce the Scheduling Department's workload.

Withdrawal Initiatives

Tribunal staff are being encouraged to suggest to parties or their representatives that they withdraw cases which do not appear to be hearing-ready.

Of course, this only postpones the Tribunal's work on the file. However, outright removal of premature cases from the caseload stream ensures that work is not wasted or duplicated. Obviously, when a party is not represented, care must be taken not to encourage a withdrawal when no purpose would in fact be served.

To assist with the early identification of these types of cases, we have also recently begun work on an amendment to the Tribunal's application form whereby applicants would be specifically invited to say in their own words why they think the Board's decision is wrong.

Pre-hearing Conferences in Out-of-Toronto Hearings

We had been experiencing a disproportionate number of out-of-Toronto hearings that had to be adjourned after the panel had travelled to the hearing location. Beginning in 1992, we have been attempting to use pre-hearing telephone conferences between the panel and the parties and their representatives, as a means of minimizing hearing-day surprises. At these conferences, issue-agenda questions and evidence issues are resolved, so that when the hearing is convened, everybody is ready to go and knows what to expect.

Where a case presents itself to the Tribunal Counsel Office as especially difficult from an issue-agenda or evidence perspective, pre-hearing conferences will also be held in Toronto cases. However, in Toronto, there is not the same need since Toronto is where the Tribunal's offices are located, and the panel members as well as the parties and their representatives usually live in the vicinity. In those circumstances, if there proves to be a problem with proceeding with the first day's hearing, the allocated time can be converted to what is effectively a pre-hearing conference, without any cost impact.

Changes to Case Description Formats

In 1993, we began experimenting with the development of more simplified Case Description formats in certain categories of cases.

Strategies for Shortening the Time Required to Write Reasons

We have decided to revisit the problem of writing reasons in light of our now extensive experience, to see if there are not some strategies that could be devised that would shorten the time and resources required in this part of the Tribunal's work. We remain committed, however, to maintaining the quality of decisions and reasons.

Internal discussions to date have raised a number of possibilities for consideration.

For example, is it feasible and/or appropriate, we are beginning to ask, to write reasons in some kinds of cases primarily for the losing party or parties, rather than for the range of audiences for which our reasons are currently written? This approach would lead to reduced descriptive and background material (the parties know what the case is all about) and to focusing the reasons primarily on the points that were important to the parties and with which the panel did not agree.

Reasons of that nature would provide limited help to parties in future cases and would likely contribute little to the Tribunal's developing understanding of issues. They might also present something of a problem for the Tribunal in dealing with subsequent requests for reconsideration or with complaints to the Ombudsman. However, decisions of that nature could be written faster and would serve the parties' basic interests.

We are also now agreed that where a panel finds a Hearings Officer's analysis on a particular issue persuasive, it is sensible and appropriate in the panel's reasons simply to adopt that analysis by reference and get on to dealing with other issues.

In 1994, we will also be considering whether there are more efficient decision formats that could be designed for particular categories of cases.

All of this will continue to be the subject of discussion with the Tribunal's Advisory Group.

Space

The Tribunal has a serious space problem and at the end of 1992 we obtained Ministry of Labour and Management Board approval to expand into contiguous space that had become available at the Tribunal's existing location. However, before the lease arrangements could be completed, the government's 1993 in-year freeze on all uncommitted public service expenditures was announced. In the spirit of that direction, and in the light of the increasingly rigorous restraint environment generally, we decided that the expansion and the costs associated with the expansion must be postponed.

We continue to be creative in finding ways to utilize every corner of space and, for the time being, we can make do. There is a point, however, beyond which space limitations begin to intrude too seriously on the Tribunal's work and to contribute too seriously to the stress of members and staff, and we are getting very close to that point. We will be exploring new space remedies in 1994.

The combination of the increasing caseload and limited space is expected to lead in 1994 for the first time to shortages in hearing-room capacity. We are planning to deal with those shortages in the short run through ad hoc arrangements for the use of hearing rooms or meeting rooms in nearby government or other agency facilities.

Postponement of the Second Phase of the Case Tracking System

In accord with the government's freeze on uncommitted expenditures, we have also postponed the development of the planned second phase of the Case Tracking System.

Social Contract Arrangements

After an initial assignment (along with the WCB) to the main Agencies, Boards and Commissions (ABC) Sector, WCAT was eventually assigned to a Sub-sector of the ABC Sector which, in addition to WCAT, included four other agencies: the Art Gallery of Ontario, the Royal Ontario Museum, the Ontario Pension Board and the Niagara Parks Commission. The common denominator amongst these agencies was that each of them had bargaining units represented by OPSEU.

Lengthy negotiations over the course of several days in July 1993, produced a framework agreement to which the unions, the five agencies and the government subscribed.

Its major features are these:

1. The agreement was acceptable to the Minister of Finance, thus relieving the Tribunal of the more onerous obligations under the fail-safe provisions of the *Social Contract Act*.
2. The agreement allowed for 100 per cent of productivity savings to be set off against the reduction targets (this may be compared with the Ontario Public Service Sector agreement which permits only 50 per cent of savings to be set off).
3. It specified the order in which the various cost-reduction measures must be resorted to, with productivity savings first, followed by unpaid leave days and then, only as a last resort, lay-offs.

4. It confirmed that the identification and quantification of productivity savings available for set-off against the reduction targets were to be solely the decision of management subject to management's obligation to participate in a structured consultation process with the union and its non-bargaining unit staff and to provide financial information that would make that consultation meaningful.
5. It required the creation of a joint committee as the vehicle for consultation between the employer and the union and bargaining-unit staff.

Following the signing of the framework agreement, a "local agreement" was negotiated with OPSEU, and a local plan for non-bargaining unit members was developed and posted.

The Tribunal's expenditure reduction target is \$327,700.

All along we had been assuming that for social contract purposes we would be allowed to treat Tribunal OIC members as Tribunal employees. However, in August we were advised that all OIC appointees throughout government were to be considered to fall within one group and designated for social contract purposes as employees of the Minister of Finance and put under the Public Service Sector agreement. The result was that the Tribunal's adjudicators were separated from Tribunal staff in the social contract arrangements and their unpaid leave days are being determined on the basis of criteria that do not take the Tribunal's particular circumstances into account.

At the time of writing, it appears that in the first social contract year (to the end of March 1994) OIC members will be required to take 10 unpaid leave days. This contrasts with the 4 to 6 unpaid leave days which it appears will be all that is required of WCAT staff, once productivity savings are taken into account.

To accommodate the unpaid leave days and minimize the impact on the Tribunal's hearing days, the Tribunal closed for three days over the 1993, Christmas-New Year's season. Other unpaid leave days in the first social contract year will be taken individually on days selected by each member or staff. We are attempting to accommodate the unpaid leave days without reducing the number of scheduled hearings.

MEMBERS' CODE OF PROFESSIONAL RESPONSIBILITY

In April 1993, after a year-long process of development and internal and external consultation, a new Code of Professional Responsibility for members of the Workers' Compensation Appeals Tribunal was published.

This Code applies to all Tribunal members: the Chair, the vice-chairs and the representative members, both full-time and part-time. It defines the professional obligations and restrictions which arise implicitly from a member's role at the Tribunal.

The Code reflects the unique features of the Appeals Tribunal and of the members' particular roles in the Tribunal's adjudicative activities, and is responsive to the Chair's and members' experience with issues of professional responsibility since the Tribunal's inception. A detailed description of the Code's Tribunal context has been incorporated in the Preamble.

The Code encompasses much of the Tribunal's previous Conflicts of Interest Policy which was first adopted in 1986. It has been expanded, however, to address some especially difficult questions that have been the subject of more recent discussions both within the Tribunal and amongst the employer and worker communities. The nature of permitted outside activities is a particular example.

Copies of the Code will be available from the Information Department.

WCAT HARASSMENT POLICY

After extensive internal discussions, the Tribunal adopted in March 1992, a formal Harassment Policy complete with specified complaint and investigative procedures. The policy closely tracks the corresponding government policy.

UNION CERTIFICATION

Local 527 of the Ontario Public Service Employees Union has been certified as the bargaining agent for Tribunal staff. The Tribunal was advised of the certification decision on December 9, 1992. The Tribunal has been involved with the union in negotiating various aspects of the social contract arrangements as well as working with them in the development of a first agreement. By the end of the reporting period, the first agreement was still under discussion.

ALTERNATE CHAIR

The Alternate Chair position at this Tribunal is a major element in the Tribunal's organizational structure. The Chair's administrative responsibilities are effectively shared between the Chair and Alternate Chair in a relation akin to that of a partnership.

Since its inception, the Tribunal has had the benefit of a series of strong and effective talents in that position — Jim Thomas, Laura Bradbury and Maureen Kenny.

In the summer of 1993, Ms. Kenny decided to return to the purely adjudicative role of a Vice-Chair. Zeynep Onen, one of the Tribunal's most experienced Vice-Chairs and a former senior TCO lawyer agreed to assume the Alternate Chair position and this change was effective August 1, 1993.

The tradition of strong leadership in the Alternate Chair's role continues.

DRAFT-DECISION REVIEW AND THE INSTITUTIONALIZING OF TRIBUNAL DECISIONS

The release in 1992 of the first decision of the Supreme Court of Canada to disapprove of aspects of a tribunal's draft-decision review process — *Tremblay v. Quebec (Commission des Affaires Sociales)* (1992), 90 D.L.R. (4th) 609 — was the occasion for reviewing the Tribunal's own draft-review process. Some refinements to our procedures were made and formal *Guidelines for Review of Draft Decisions* were adopted. These describe the Tribunal's procedures in detail and appear as Appendix A to this Report.

In 1992, in a paper presented as part of the Law Society's Special Lectures on Administrative Law,¹ the Chair had occasion to comment on the institutionalizing of tribunal decisions and on the need, generally, for a tribunal to have an effective corporate presence in its own adjudication processes. The paper may be of interest to the readers of this Report as it reflects the Chair's experience at WCAT and describes views which have obviously influenced the development of WCAT structures.

1 Ellis, "Comments on the Institutionalizing of Tribunal Decisions", *Administrative Law: Principles, Practice and Pluralism*, 1992 LSUC Special Lectures, at p. 357.

WCAT DECISIONS AND WCB POLICY

The divergence between the Appeals Tribunal's interpretations of the *Workers' Compensation Act* and ongoing WCB policy is widening.

Under section 93 of the Act (previously section 86n), the WCB board of directors has the power, and also, it has always been thought², the responsibility, to review confirmed Tribunal interpretations of the Act that conflict with WCB policies. The review is conducted with a view to either directing a correction of such interpretations where it finds them to be wrong or conforming WCB policy to them where it finds them to be right.

During this reporting period, however, the WCB's commitment to that view of the board of directors' responsibilities appears to have waned. There are now a number of issues — at least two of them of major significance — on which the Tribunal has consistently decided cases in reliance on interpretations that conflict directly with the WCB's administration of the Act, but in respect of which the directors have neither invoked section 93 nor intervened in the WCB's continued administration of the Act in breach of those interpretations.

When WCB policy or practice conflicts with confirmed Tribunal decisions, one of the practical possibilities, it has now become evident, is that the board of directors may become actually or tacitly deadlocked on the issue — not willing or, perhaps, not able, either to disagree with the Tribunal's views or to change the Board's policy or practice. Indeed, these are circumstances that may even become commonplace, given the increasingly, de facto, bipartite nature of the board of directors' decision-making processes.

In such circumstances, the directors' non-exercise of their section 93 powers, while a questionable strategy in terms of the responsibilities contemplated by the Act, is admittedly an effective practical means for limiting the systemic impact of interpretations which in the ordinary course of the directors' proceedings can neither be accepted nor changed.

It is a strategy, however, which distorts the system and undermines its integrity. For it creates — and implicitly condones — two official but conflicting sets of workers' compensation rights and benefits. And access to the special benefits of the second set is limited to the elite group of workers or employers who are familiar enough with the law to know that the "official" information provided by WCB administrators concerning those issues is not in point of fact determinative, and who have the stamina and resources required to take their cases to the final level of appeal.

Implicit in such a strategy, as well, is the unwanted growth that must follow in the number of appeals in routine cases. The potential caseload implications may be seen in the experience of British Columbia and Quebec. In those two provinces, the failure or unwillingness of the workers' compensation boards to harmonize their policies with the decisions of external appeals bodies has been long entrenched. And, there, the appeals caseloads have traditionally been several times the caseload experienced in Ontario.

2 See Weiler, *Reshaping Workers' Compensation for Ontario*, 1980, at p. 116; Proceedings of the Standing Committee on Resources Development, *Hansard Official Report of Debates*, Legislative Assembly of Ontario, Second Session, 33rd Parliament, March 10, 1987, No. R-28, at pp. R-635 to 641; WCAT's *Second Report*, 1986-1987, at p. 10; and *Review of Decisions No. 915 and 915A* (1990), 15 W.C.A.T.R. 247, at pp. 250 and 252, where the Ontario WCB board of directors describes WCAT's role as the "judicial branch of the workers' compensation system" and refers to WCAT's adjudication of appeals as being "essentially complimentary" to the administration and governance of the Act by the board of directors.

The WCB administrators also have an important role to play if WCB policies and Tribunal decisions are to remain essentially congruent. For it is they, not the part-time directors, who must be conscientious in identifying WCAT interpretations which conflict with Board policies or practices, and in taking such reasonable steps as are available to them to ensure that such conflicts are resolved. If the board of directors is to meet its responsibilities, the administrators must accept theirs.

Steps for ensuring the basic congruency between Tribunal decisions and WCB policy and practice that are available to the administrators include:

1. providing the Tribunal with full and persuasive submissions on errors or misunderstandings in the Tribunal's interpretation so that the next Tribunal panel to consider the same issue may, with the benefit of such submissions, come to a different conclusion;
2. weighing the significance of the decision having regard, for example, to the persuasiveness of its reasons, the extent to which it is supported by other Tribunal decisions, or any unusual aspects of the facts on which it is based, and perhaps deciding to wait and see whether the decision might in the course of time prove to be merely an anomaly;
3. recognizing the correctness of the Tribunal decision and modifying the practices in question or proposing policy changes to the board of directors; or,
4. when all else fails, recommending to the board of directors that it exercise its section 93 powers.

During the reporting period, all of these activities were carried on, but it is the Chair's impression that in the last year or so the commitment to the second, third and fourth steps has lessened, and that there is a growing tendency for the administration to note, but then to ignore, the policy implications of Tribunal decisions.

When the Board's administrators decide that it is acceptable or necessary for them to ignore entrenched conflicts with Tribunal interpretations, the systemic consequences are indistinguishable from those that flow when the directors ignore their section 93 powers.

HIGHLIGHTS OF THE 1992-93 CASE ISSUES

The years 1992 and 1993 saw a number of interesting developments in the Tribunal's case law. Unfortunately, it is never possible to do more than highlight some of the legal, factual and medical issues which the Chair found of particular interest in this portion of the Chair's report. The issues are presented in no particular order of importance. Some have been noted previously, while others are new.

The *Workers' Compensation Act* has been amended several times, and a consolidating statute (R.S.O. 1990, c. W.11) was enacted during this reporting period. For ease of reference, the current Act incorporating the changes introduced by Bill 162 will be called the 1990 Act. The earlier versions of the *Workers' Compensation Act* will be referred to as the pre-1989 Act and the pre-1985 Act.

Re-employment Under the 1990 Act

This reporting period saw the release of a number of Tribunal decisions dealing with the re-employment rights created by the Bill 162 amendments. Previously, employers were not required to offer to re-employ injured workers. The new rights and obligations not only pose new questions of statutory interpretation, but also require the Tribunal to consider more general issues than those posed in the typical entitlement case. For example, the way an employer is structuring its business in response to financial pressures or the effect of a collective agreement may be relevant considerations under the Bill 162 amendments.

The 1991 Annual Report noted that the Board had provided general submissions to the Tribunal on the Board's interpretation of the re-employment provisions following the release of *Decision No. 372/91* (1991), 19 W.C.A.T.R. 317. *Decision No. 372/91* had approached the requirement that the Board give notice of fitness quite strictly, and had also held that the employer's obligation to offer to re-employ did not arise until the employer had received a valid notice of fitness from the Board. *Decision No. 605/91* (1991), 21 W.C.A.T.R. 131, which was the only decision to consider the Board's submissions in 1991, also held that the Act required the Board to give notice of fitness to an employer before the obligation to re-employ could arise.

While a few decisions in 1992 agreed with the two early Tribunal decisions, more recent cases have held that the 1990 Act creates a general obligation to re-employ. These cases have held that it is possible to make a determination of non-compliance where a worker is let go after returning to work, whether or not the Board has issued a notice of fitness. Similarly, the section 54(10) presumption applies where a worker is let go within six months, whether or not there has been a previous Board notice. (See, for example, *Decisions No. 716/91I* (1992), 22 W.C.A.T.R. 181, *746/91I2* (1992), 23 W.C.A.T.R. 260, *896/91* (July 9, 1992), *366/92I* (1992), 24 W.C.A.T.R. 199, *449/92* (1992), 25 W.C.A.T.R. 148, and *507/92I* (1993), 28 W.C.A.T.R. [page numbers for this volume were not available at the time of publication]. Compare *Decision No. 288/91* (1992), 22 W.C.A.T.R. 132.) Recent Tribunal decisions have also clarified that it will only be in exceptional cases that a notice of fitness will be found to be inadequate (see, for example, *Decision No. 552/91* (1992), 23 W.C.A.T.R. 183).

Tribunal decisions have not accepted the current Board policy that an employer must have "just cause" before it can terminate a worker without breaching its re-employment obligations. The Tribunal has reasoned that the intent of the 1990 Act is to place the worker in the position he or she would have been in if the workplace accident had not occurred. This reasoning is also supported by a Supreme Court of Canada decision on similar wording in a Quebec statute (*La France v. Commercial Photo Service Inc.* [1980], 1 S.C.R. 536). Thus, the Tribunal asks whether the employer's reasons for termination are unrelated to the workplace injury or are an attempt to avoid the re-employment obligations, and whether these are the only reasons. (See *Decisions No. 716/91I*, *296/92I* (June 25, 1992), *139/92* (1992), 24 W.C.A.T.R. 113, *704/91* (October 15, 1992), *233/93* (1993), 28 W.C.A.T.R., and *355/92* (1992), 24 W.C.A.T.R. 184. While not all of these decisions are unanimous, the majority decisions and unanimous decisions have consistently taken this view.)

The Tribunal has interpreted the section 54(10) presumption similarly to the section 4(3) presumption, which applies when an injury by accident occurs in or arises out of employment. The section 54(10) presumption is generally said to be rebutted by clear and convincing evidence that the termination is for reasons unrelated to the compensable disability. (See *Decisions No. 507/92I*, *716/91I* and *704/91*.)

The Tribunal was called on to apply the new re-employment provisions to a variety of workers (for example, short-term contract workers hired under particular terms and conditions (*Decisions No. 296/92I* and *233/93*), union workers with seniority rights (*Decision No. 173/92* (1992), 24 W.C.A.T.R. 132), and probationary workers (*Decision No. 704/91*), and to a variety of situations (see, for example, *Decisions No. 335/92* (1992), 25 W.C.A.T.R. 80, and *852/92* (1993), 28 W.C.A.T.R.).

Another developing area regarding the re-employment provisions is penalty assessment. Where the re-employment obligation is breached, the 1990 Act gives the Board the authority to award benefits to the worker and to levy a penalty against the employer. Board policy currently indicates that the maximum penalty (which is set by section 54(13) as the injured worker's net average earnings for the preceding year) should generally be imposed unless the employer cannot rehire the worker for reasons beyond its control (e.g., a market collapse) or the employer subsequently rehires the worker.

Decision No. 605/91F (1993), 25 W.C.A.T.R. 10, held that the current, more onerous Board policy should not be applied retroactively to an employer who had appealed a 50 per cent penalty.

While some Tribunal decisions have upheld a maximum penalty (see *Decision No. 561/91* (1992), 23 W.C.A.T.R. 128), a number have taken a more flexible approach. In particular, panels have considered the seriousness of the employer's misconduct and the employer's financial position (*Decisions No. 730/91* (1992), 24 W.C.A.T.R. 71, *744/91* (1991), 21 W.C.A.T.R. 333, *769/91* (1992), 24 W.C.A.T.R. 94, and *449/92*).

The Tribunal has upheld the Board's view that the federal *Government Employees Compensation Act* incorporates the Ontario re-employment provisions, making them applicable to federal workers in Ontario (see *Decision No. 716/91I*).

Employment Benefits Under the 1990 Act

In this reporting period, the Tribunal released its first decision on the section 7 obligation to make contributions for employment benefits for one year following a workplace injury. This provision was enacted at the same time as the re-employment provisions. *Decision No. 427/92I* (1992), 24 W.C.A.T.R. 255, held that employer payments to a union to contribute to an RRSP pursuant to a collective agreement were covered by section 7. The panel noted that there was some ambiguity as to whether the Board could direct the employer to make the contributions; however, the Panel approved of the Board's use of a penalty which could be reconsidered on payment of the benefit, as an enforcement mechanism.

The Tribunal's final decision in this matter, *Decision No. 427/92* (1993), 27 W.C.A.T.R. 142, indicated that the Board's policy of imposing a mandatory minimum penalty for breach of section 7 appeared to be inconsistent with the discretionary wording in section 7 and with the Board's policy developed under the similarly worded penalty provision in section 54(13). The panel found no penalty should be imposed since the unpaid sum was small and did not cause any substantial hardship to the worker, and the employer acted in a good faith desire to put a test case to the Tribunal, and made the payment as soon as it received *Decision No. 427/92I*.

Vocational Rehabilitation

Prior to the 1990 Act, there was no statutory requirement to provide vocational rehabilitation services. The Board had a statutory discretion to do so under the pre-1989 and pre-1985 Acts, and had developed a number of policies on vocational rehabilitation. Vocational rehabilitation activities also had the potential to affect a worker's level of entitlement to supplementary benefits and temporary partial disability benefits under the pre-1985 and pre-1989 Acts. For workers covered by this earlier legislation, vocational rehabilitation activity is now also relevant to entitlement to a transitional supplement under section 147(2) of the 1990 Act.

The 1990 Act created a new scheme of compensation for workers injured after December 31, 1989. Vocational rehabilitation is central to this new scheme. The old pension assessment scheme was replaced with a compensation system tied to the loss of earnings caused by the compensable injury. The 1990 Act also imposed a new statutory obligation on the Board to offer rehabilitation services to reduce income loss due to a compensable injury. Vocational rehabilitation continues to be relevant to entitlement to temporary partial disability benefits under section 37(2)(b) of the 1990 Act, but is now also relevant to a worker's permanent compensation. The 1990 Act requires consideration of the prospects of successful medical and vocational rehabilitation in determining a worker's future loss of earnings under section 43(7) (commonly called a FEL award). Rehabilitation, in particular medical rehabilitation, is also relevant to a determination of a worker's non-economic loss under section 42 (NEL award).

Three decisions have issued which commented on the connection between vocational rehabilitation and a FEL award. See *Decisions No. 344/93* (1993), 27 W.C.A.T.R. 259, *500/93* (1993), 27 W.C.A.T.R. 314, and *607/93* (1993), 28 W.C.A.T.R. And see *Decision No. 489/93I* (November 29, 1993), which asked for submissions on FEL awards. *Decision No. 344/93* found that the Tribunal could retroactively authorize a worker's self-directed rehabilitation program pursuant to the Tribunal's ability under section 86(3) to make any order which the Board could make. The Panel approved the Board's practice of granting a nominal FEL sustainability award so that the worker could receive a FEL supplement while co-operating in an authorized vocational rehabilitation program. *Decision No. 500/93* held that the Board's policy of paying transitional supplements retroactively if the worker successfully appealed should also apply to a successful appeal of a FEL supplement.

This reporting period saw the beginning of a trend for panels to be more pro-active in identifying rehabilitation steps which should be taken. In one case, the panel retained a vocational rehabilitation consultant to provide evidence. See *Decisions No. 924/91* (March 18, 1993), *500/93* and *592/92I* (February 16, 1993). Panels have also directed the Board to provide the worker with further rehabilitation services where the original services were not appropriate, or where circumstances had changed and the panel was satisfied the worker would now benefit from rehabilitation. See *Decisions No. 490/92* (January 11, 1993) and *592/92I*. And see *Decision No. 614/93* (1993), 28 W.C.A.T.R.

Occupational Stress

The 1990 and 1991 Annual Reports record that the Board was then in the process of developing a policy on chronic occupational stress, in addition to its policy on stress claims resulting from traumatic and life-threatening events. Since no Board policy on chronic stress materialized during this reporting period, the Tribunal continued to adjudicate chronic stress appeals under the Act on a case-by-case basis.

The Tribunal now appears to have abandoned the original approach to stress claims proposed in *Decision No. 918* (1988), 9 W.C.A.T.R. 48, that workplace stressors either be unusual, or that they be the predominant cause of a disability. No cases during the two years covered by this Report applied this test.

This reporting period has seen the development of a new test, which addresses the problem of how to assess workplace stressors and the subjective reaction of workers to them. *Decision No. 631/91* (1992), 21 W.C.A.T.R. 251, held that the test was whether there were stressors, usual or unusual, in the workplace and, if so, would a reasonable person in a similar situation find these stressors to be potentially disabling. *Decision No. 717/88* (August 19, 1992) agreed that the reasonable-person test should be applied in deciding whether there were any workplace stressors. And see *Decisions No. 636/91* (1992), 21 W.C.A.T.R. 277, and *672/92* (December 11, 1992). This test represents a middle ground between a purely objective and purely subjective assessment of workplace stressors.

Stress claims are particularly challenging to adjudicate and may require a detailed review of the workplace. It is interesting to note that two cases during this reporting period were based on allegations of discrimination and harassment. *Decision No. 198/92* (1992), 24 W.C.A.T.R. 155, found that the allegations of racial discrimination were not objectively verifiable and the worker's stress was not compensable. In *Decision No. 636/91*, the panel reviewed allegations of sexual and racial harassment following the integration of male and female units in a correctional facility. The panel found that, viewed objectively, the workplace stressors were serious and a reasonably stable person would have been seriously affected. The worker's reactions were not markedly different, and her stress disability was compensable. And see *Decision No. 586/91* (1993), 28 W.C.A.T.R., which found that the Act removes the right to sue for damages for sexual harassment which occurs in the course of employment.

Decision No. 397/92 (January 28, 1993), which involved a claim for stress by a police officer, is also of interest. The panel noted that the worker's claim could equally have been accepted under the current Board policy for psychological disability, which allows for entitlement for workplace stress arising from stressful incidents that are sudden, shocking or life-threatening.

Occupational Disease

Occupational disease cases involve workplace exposure to harmful processes or substances. The Tribunal's interpretation of the law in this area remains the same. Disabilities are compensable if they fall within the statutory definition of "industrial disease", or within the "disablement" branch of the definition of "accident."

Occupational disease cases are among the most complex to adjudicate, since decisions often have to be made on the basis of developing, and often conflicting, medical and scientific knowledge. As *Decision No. 645/93* (1993), 28 W.C.A.T.R., notes, entitlement can be granted in the absence of supportive epidemiological evidence if there is persuasive medical and non-medical evidence which establishes, on a balance of probabilities, that there is a causal relationship between the work and the disability.

Among the issues recently considered by the Tribunal are the relationships between full-body vibration and back disability (*Decision No. 373/91* (December 14, 1992)), lung cancer and exposure to coke oven emissions and welding fumes (*Decision No. 307/89* (January 10, 1992)), and manual work and Dupuytren's contracture (*Decision No. 645/93* (1993), 28 W.C.A.T.R.).

Decisions No. 134/89 (1993), 26 W.C.A.T.R. 32, and *375/92* (1993), 28 W.C.A.T.R., extensively reviewed lung cancer and exposure to asbestos, and the medical evidence that asbestosis tends to precede the onset of lung cancer. The panels concluded that the intensity of exposure and the latency period are the two most important factors in assessing a causal relationship between asbestos and lung cancer. And see *Decision No. 786/91* (January 19, 1993) which considered the medical controversy concerning a relationship between exposure to silica and lung cancer, when there is no evidence of silicosis.

Workplace exposure can also aggravate a pre-existing condition, or can sensitize a worker to a particular substance. For an interesting discussion of the difference between exposure to irritants and sensitizers on an underlying asthmatic condition, see *Decision No. 437/92*, (1993), 26 W.C.A.T.R. 181. Several decisions have considered how to assess a pension for asthma under the pre-1989 legislation. *Decision No. 740/91* (1993), 25 W.C.A.T.R. 16, preferred the Quebec guidelines to the AMA guidelines in assessing pensions for pulmonary impairments. The Quebec guidelines use three different measures of impairment: level of bronchial responsiveness, level of bronchial hyperactivity and need for medication. And see *Decisions No. 304/93* (1993), 27 W.C.A.T.R. 244, and *617/93* (October 28, 1993) on pension assessments for asthmatic conditions.

Hearing loss due to exposure to noise is treated as an industrial disease under the Act. The Tribunal now has substantial experience in reviewing hearing loss and tinnitus claims. See, for example, *Decisions No. 789/90* (1992), 22 W.C.A.T.R. 84, *27/92* (January 20, 1993), *33/92* (January 20, 1993), *356/92* (1993), 25 W.C.A.T.R. 116, *78/93* (October 22, 1993), and *405/93* (October 18, 1993). *Decision No. 434/89A* (1993), 27 W.C.A.T.R. 1, considered the appropriate start date for entitlement to benefits under the Board's 1988 hearing loss policy, which reduced the entitlement requirements to a 35 decibel loss in one ear and 25 decibels in the other. The panel agreed with *Decision No. 915A* (1988), 7 W.C.A.T.R. 269, that the common law requires limits on retroactivity where there is a change in policy because of an "overruling" based on legal or medical developments. The panel decided that July 10, 1976, was the appropriate start date, since that was when the Board knew or ought to have known of the relevant medical advances.

Experience Rating of Employers

NEER is an experience rating program which is intended to shift some of the burden of a rate group's costs to employers with greater claim costs. An employer's actual costs in a year are compared with the assessment rate for the rate group. The employer's costs for that year are considered in the calculation of the employer's assessment in each of the following three years.

Decision No. 709/91 (1992), 23 W.C.A.T.R. 214, considered the proper interpretation of the transitional provisions which were adopted when the Board introduced a new NEER formula in 1987. The Panel affirmed previous Tribunal cases which found that the Tribunal has the jurisdiction to hear all aspects of an employer's assessment appeal, but that the systemic effect on the Board's administration must also be considered. On the evidence in *Decision No. 709/91*, the panel accepted the employer's interpretation of the "best of three" formula. The Panel left open the possibility that the Board might devise a policy solution for handling future cases or might enter into further negotiations with the relevant industry association. An appeal involving similar issues was brought to the Tribunal in *Decision No. 214/93I* (1993), 27 W.C.A.T.R. 192, but the panel allowed it to be withdrawn at the employer's request to enable the Board to reconsider its decision.

Decision No. 509/92 (1993), 28 W.C.A.T.R., is also of interest. It dealt with the impact of the no-fault auto insurance scheme on NEER assessments.

Associated Employers

Decision No. 43/90 (1992), 23 W.C.A.T.R. 86, noted that there was no definition of an associated employer in the Act or regulations. The panel found that it was unreasonable to deem two companies to be related for assessment purposes solely on the basis of a family relationship. And see *Decision No. 778/90* (1992), 23 W.C.A.T.R. 143, which considered the relationship between a principal and contractor under section 9(3) of the pre-1989 Act, and also the appropriateness of piercing the corporate veil.

Decision No. 457/90 (1992), 22 W.C.A.T.R. 68, held that despite an employer having separate WCB account numbers for its various plants, an individual plant could not be treated as separate entity for penalty assessment where the individual plant was a fully integrated part of the company's operations and all plants were in the same rate group.

Chronic Pain and Fibromyalgia

Chronic pain and fibromyalgia have been issues of continuing interest to those involved in workers' compensation. While the Board and Tribunal initially took different views of whether chronic pain was within the scope of the *Workers' Compensation Act*, the WCB board of directors section 93 (then section 86n) review of June 1, 1990 (*Review of Decisions No. 915 and 915A* (1990), 15 W.C.A.T.R. 247) showed substantial agreement between the two institutions. The board of directors found that there was no need to direct the Tribunal to reconsider *Decision No. 915* (1987), 7 W.C.A.T.R. 1, and *Decision No. 915A* (1988), 7 W.C.A.T.R. 269, which had held that chronic pain was compensable and that the start date for compensation should be March 27, 1986. However, the board of directors subsequently directed the Tribunal to reconsider a number of Tribunal decisions which had awarded *temporary* benefits for chronic pain prior to March 27, 1986.

The background to the Board's and Tribunal's treatment of chronic pain and fibromyalgia is set out in some detail in Appendix C to the Third Report and in the 1991 Annual Report. And see *Decision No. 12R2* (1993), 26 W.C.A.T.R. 1.

The Tribunal's reconsideration processes had been put on hold pending the board of directors' determination of a request to reconsider its section 93 direction. At the close of the last reporting period, the Tribunal was in the process of contacting the parties and rescheduling pre-hearing conferences.

During this reporting period, two final Tribunal decisions issued in these cases. There have also been a number of interim decisions. Submissions from the Board have been obtained in several cases, and more decisions should issue in the next reporting period.

The issues in dispute in the two final decisions included the relationship between the Board and the Tribunal on a section 93 review. *Decision No. 757R* (June 29, 1993) agreed with the earlier analysis in *Decision No. 42/89* (1989), 12 W.C.A.T.R. 85, about the weight to be accorded to the Board's interpretation of law and policy when considering the very case in which reconsideration was directed. While the Tribunal is obliged to apply the Board's interpretation in reviewing the facts of the case, the Tribunal must also be satisfied the case was properly subject to a section 93(1) review. In *Decision No. 757R*, the panel concluded, based on the wording of the original

decision and more recent medical assessments, that the worker's compensable disability was organically based, and not attributable to chronic pain. Thus, *Decision No. 757* (May 30, 1988), did not turn on the Board's interpretation of the appropriate retroactivity date for chronic pain, and the Tribunal was not required to reconsider. The Board was ordered to pay temporary total disability benefits for an organic condition, as originally ordered.

Reconsideration was also denied in *Decision No. 12R2*, but for somewhat different reasons. *Decision No. 12R2* concerned unique facts, as it was the only chronic pain case reviewed by the Board that was released prior to the adoption of the Board's chronic pain policy. The panel reviewed the handling of the worker's case in detail, and the impact of the section 93 review on it.

In addition to the test proposed in *Decision No. 42/89* for determining whether a case was properly subject to a section 93 review, *Decision No. 12R2* found that other concerns, including natural justice concerns, could lead to a conclusion that a decision should not be reconsidered. While there were several process concerns, the panel's primary concern was that the Board's policy had been applied retroactively to a final Tribunal decision which had been released nine months before the policy was adopted. Reconsideration was denied and the Board was directed to implement the original decision.

Turning to other chronic pain cases, the Tribunal has had occasion to review the Board's new Psychotraumatic and Behavioural Disorders Rating Schedule. See *Decisions No. 722/92* (April 29, 1993), and *571/91* (February 24, 1992). And see *Decision No. 389/91* (February 6, 1992). *Decision No. 741/90* (February 5, 1992), upheld the Board's use of the Psychotraumatic and Behavioural Disorders Rating Schedule in fibromyalgia cases.

Canadian Charter of Rights

The *Canadian Charter of Rights and Freedoms* is part of the Constitution of Canada and protects the civil liberties of Canadians. Section 24(1) of the Charter provides that anyone whose rights or freedoms have been violated may apply to a "court of competent jurisdiction" to obtain such remedy as the court considers just in the circumstances. Section 52(1) of the Constitution provides that the Constitution is the "supreme law" of the land and any law inconsistent with the Constitution is "to the extent of the inconsistency, of no force or effect".

As the 1990 Annual Report noted, the Tribunal has had few Charter challenges. *Decision No. 534/90I* (1990), 17 W.C.A.T.R. 187, was the most comprehensive Charter decision as of the end of 1991. The Panel adopted the reasoning of the Ontario Court of Appeal in *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)* (1989), 62 D.L.R. (4th) 125, in holding that the Tribunal was not a court of competent jurisdiction under section 24(1) of the Charter, but that tribunals could hear challenges to their constituent legislation under section 52(1). The panel invited submissions on whether the Tribunal had the jurisdiction to decline to hear a Charter challenge under section 52(1).

Subsequently, the Supreme Court of Canada released four decisions dealing with the Charter and administrative tribunals. While these decisions did not affect the panel's decision on section 24(1), they clarified and changed the law on section 52(1). The panel considered section 52(1) again in light of the new law.

Decision No. 534/90 (1992), 23 W.C.A.T.R. 121, found that section 52(1) does not confer Charter jurisdiction on a tribunal; such jurisdiction exists only if the legislature expressly or implicitly intended to confer such jurisdiction on the tribunal. In determining the legislature's intent, it is particularly important to consider whether the tribunal's legislation authorizes it to

determine questions of law. Other factors to consider include: whether the tribunal determines questions of law in accomplishing its ordinary tasks; whether the tribunal's usual work involves application of complex legislative rules or regulations; whether the remedies available to the tribunal would be effective; whether the tribunal has specialized competence to make a valuable contribution to the constitutional issue in question; and issues of practicality and convenience. The panel concluded that a tribunal's jurisdiction under the Charter may or may not exist depending on the issue in dispute.

Based on the factors outlined above, *Decision No. 534/90* held it would be reasonable to infer that the legislature intended to confer general Charter jurisdiction on the Tribunal. However, the panel found there was no jurisdiction to consider the Charter issue raised in this case, since the Tribunal did not have the jurisdiction to fashion a suitable remedy.

While it was not necessary to decide this issue in light of the ruling on jurisdiction, the majority concluded that the Supreme Court decisions did not affect the interim decision's reasoning about the possibility of the Tribunal having a discretion to refuse to consider a Charter issue even where its jurisdiction to consider the issue was clear. The minority view was that where Charter jurisdiction existed, it was mandatory.

Other Issues

Other interesting legal and medical issues to come before the Tribunal include: the retroactivity of interest payments (*Decisions No. 483/88A* (July 2, 1992), *819/89* (July 10, 1992), *168/92* (1992), 22 W.C.A.T.R. 279, and *109/91* (1992), 24 W.C.A.T.R. 43); the effect of an altered gait in one leg on the other leg (*Decision No. 67/92* (August 6, 1993)); the calculation of a second penalty after a long period of time with no penalty (*Decisions No. 249/93* (1993), 27 W.C.A.T.R. 220, and *770/91* (1992), 22 W.C.A.T.R. 219); and the collection and waiver of overpayments (*Decisions No. 24F2* (1992), 22 W.C.A.T.R. 1, *879/92I* (January 8, 1993), *624/92* (1993), 25 W.C.A.T.R. 175, *118/93* (March 5, 1993), *34/92I2* (1993), 27 W.C.A.T.R. 105, *327/93* (June 7, 1993), and *241/93* (June 7, 1993)).

JUDICIAL REVIEW ACTIVITY

In 1992, applications for judicial review were heard by the Divisional Court in *Decisions No. 977/89* (1990), 13 W.C.A.T.R. 298, *155/90* (March 12, 1990) and *32/91* (1991), 18 W.C.A.T.R. 258.

All three applications were dismissed.

The application for judicial review of *Decision No. 801/88* (November 23, 1988) was dismissed for delay on December 29, 1992.

In 1993, the Divisional Court heard applications for judicial review of the following nine Tribunal decisions:

- *Decision No. 497/90* (September 27, 1990), heard January 13, 1993;
- *Decision No. 1030/89* (1991), 20 W.C.A.T.R. 46, heard February 4, 1993;
- *Decisions No. 936/90* (January 30, 1991) and *936/90R* (September 16, 1992), heard May 12, 1993;
- *Decisions No. 927/89* (1992), 23 W.C.A.T.R. 33, *287/90* (July 20, 1992), *288/90* (July 20, 1992) and *289/90* (July 20, 1992), heard together on June 3, 1993;
- *Decision No. 345/91* (March 18, 1992), heard September 27, 1993.

All applications were dismissed.

The motion for leave to appeal to the Court of Appeal respecting the decision of the Divisional Court upholding the Tribunal's *Decision No. 656/88* (December 9, 1988) was heard on May 3, 1993, and a motion for leave to appeal to the Court of Appeal respecting Tribunal *Decisions No. 927/89, 287/90, 288/90 and 289/90* was heard on December 6, 1993. Both motions were dismissed.

The application for judicial review of *Decision No. 917/88* (August 11, 1989) was abandoned.

At the end of 1993, five applications for judicial review of the following Tribunal decisions remained outstanding:

- *Decision No. 824/90* (April 2, 1992);
- *Decision No. 716/91* (1993), 26 W.C.A.T.R. 93;
- *Decision No. 33/93* (April 20, 1993);
- *Decision No. 385/93* (August 4, 1993);
- *Decision No. 439/93I* (July 13, 1993).

There was, as well, an application for judicial review of a panel's preliminary rulings, made in appeal No. WCAT 93-0199.

Other Matters

On December 2, 1992, an injunction was granted by the Ontario Court (General Division) restraining an applicant from proceeding with a section 17 application before the Tribunal until the trial or other final disposition of the matter. The Tribunal was granted status as a friend of the Court and opposed the granting of the injunction on jurisdictional grounds. On February 4, 1993, leave to appeal from this decision was granted, and on June 9, 1993, the Divisional Court set aside the injunction. The decision to set aside is now subject to a motion for leave to appeal to the Court of Appeal.

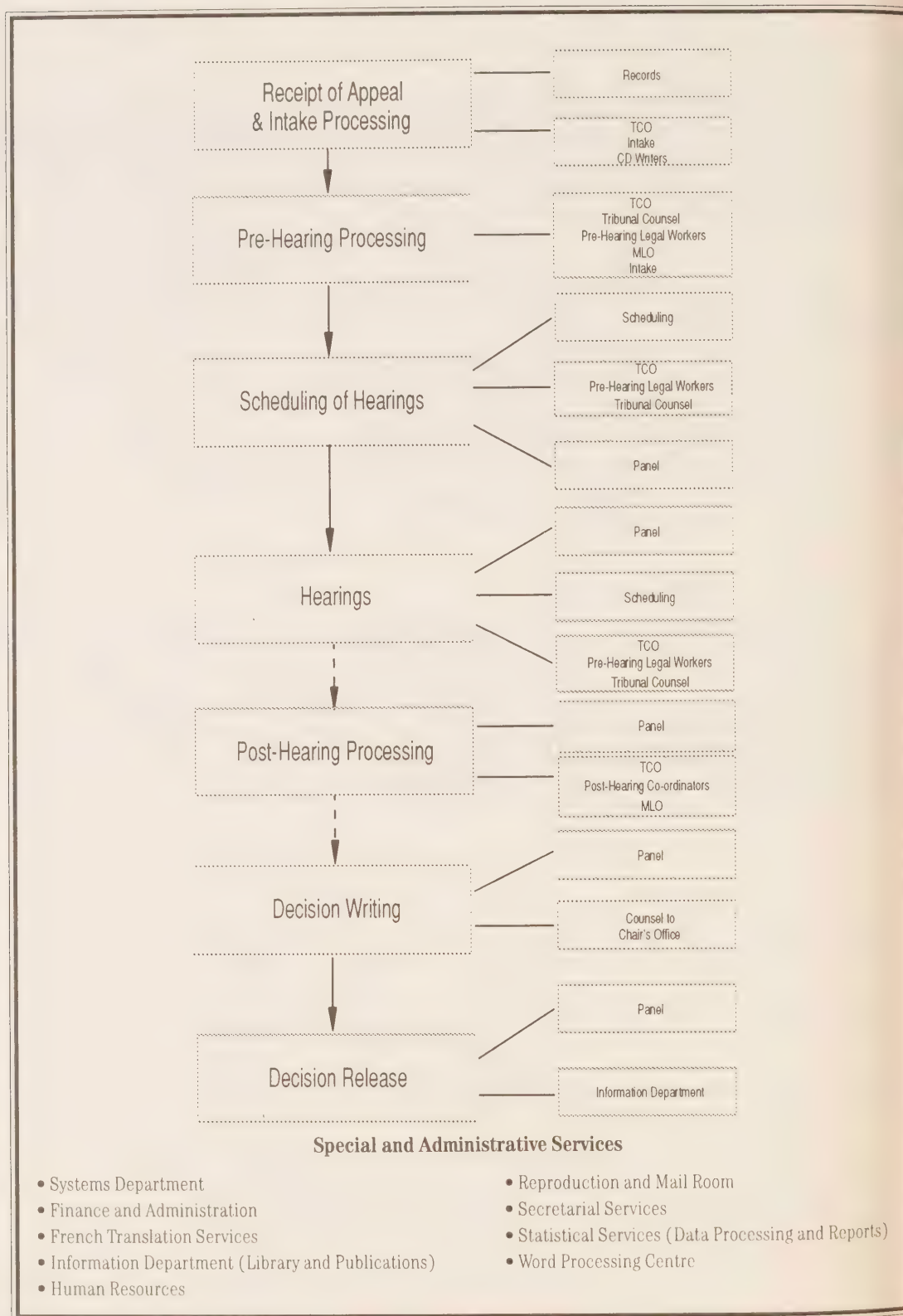


Figure 3 -- THE APPEAL PROCESS

THE TRIBUNAL REPORT

THE APPEAL PROCESS

The appeal process used by the Tribunal has been represented graphically as a flow chart on the facing page (Figure 3, p. 22). The process from receipt to final disposition of a typical appeal is as follows.

Appeals are logged in by Records and forwarded to Intake, the department responsible for obtaining the worker's file from the WCB and other necessary preliminary information. Once Intake's work is complete, it forwards the file to the Tribunal Counsel Office where the case is prepared for hearing. The main vehicle in this regard is the Case Description (CD) which provides an indexed copy of all relevant documents from the WCB file and it may include a summary of the facts and identify the issues. Upon completion, the CD is forwarded to the WCB and to the worker and employer, or their representatives, who are free to request deletions, additions or amendments.

(The worker's consent to the employer having access to documents in his or her file is sought at the initial stages of an appeal. If the consent is withheld, the processing of the appeal is put on hold while the issue of the employer's right of access to relevant documents is decided by a Tribunal panel. This is done in a special panel process).

At the same time, the CD is sent to the Tribunal's Medical Liaison Office (MLO), to the Tribunal counsel assigned to assist with the case and to the Scheduling Department. A hearing date is set by the Scheduling Department if it was not previously set when the CD was sent to the parties. The MLO identifies medical issues in the case and checks the medical evidence available in the file and consults where necessary with the Tribunal's Medical Counsellors as to significant omissions or deficiencies. Problems with the medical evidence are addressed by further investigating, perhaps through seeking further information or clarification from doctors whose reports are to be found in the WCB file or by seeking additional advice or opinions from doctors on the Tribunal's roster of Order-in-Council appointed medical assessors. If this activity cannot be completed before the hearing date, the problem is brought to the attention of the hearing panel at the hearing and the panel may direct post-hearing completion of such further investigation.

A hearing panel may, in any event, in the course of the hearing and decision-making process, identify for itself a need for further medical or other investigation. Where that happens, it will instruct the Tribunal Counsel Office to co-ordinate and direct that investigation, post-hearing.

The results of any Tribunal investigations, whether post-hearing or pre-hearing, are shared with the parties, who are entitled to make submissions in respect of them.

It is usual for panels to rely on written medical reports as sufficient indication of a doctor's evidence. However, where a report requires clarification or explanation, and the panel decides a written clarification is not sufficient, the report's author may be required to testify and questioned about the report.

The Tribunal counsel investigates the law relating to an appeal and, where necessary, provides the hearing panel, and the parties, with copies of especially significant previous decisions of the Tribunal or of other authorities. He or she also assists with any need for further clarification of the issues likely to be addressed by a hearing panel and provides information to both parties' representatives concerning the probable issue-agenda and the Tribunal's hearing process.

All evidence including the CD must be filed and distributed to the parties three weeks before the hearing.

The CD, any additions to the CD requested by the parties, and any product of the pre-hearing work of the MLO or the Tribunal counsel is delivered to each member of the tripartite hearing panel a few days before the hearing date and is read by them in advance of the hearing.

At the hearing, any participating party is entitled to submit such further documentary evidence as he or she considers necessary and to have any witnesses testify. This is subject to the obligation to give the other party and the Tribunal three weeks advance notice of such evidence. Witnesses may be cross-questioned by the other party and by any member of the hearing panel. It is usual for at least the worker to testify.

Once all the evidence has been presented, submissions on the evidence and law are made and the hearing is then considered complete. The hearing is, however, always subject to being reconvened on the initiative of the hearing panel if the panel concludes that additional evidence or further submissions are needed.

After the hearing, the decision is made through a process involving panel caucuses, drafting reasons, reviewing draft reasons, re-drafting, further caucuses, etc. The drafting of reasons is the responsibility of the panel chair but all three members of the hearing panel participate fully in the decision-making process. The panel may submit the decision to the Tribunal's draft review process.

After the decision is released, the Tribunal may receive a request for reconsideration, or be asked to respond to a complaint to the Ombudsman's Office, or the decision may become the subject of judicial review.

VICE-CHAIRS, MEMBERS AND STAFF

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors active during the reporting period, as well as a record of the roster changes and résumés for newly appointed Vice-Chairs and Members, can be found in Appendix B.

TRIBUNAL COUNSEL OFFICE

The Tribunal Counsel Office (TCO) consists of six groups, each reporting to the General Counsel.

Intake

The Intake Department handles all incoming appeal applications and the public's questions about appeals and about the appeal process. The Intake Department has been primarily responsible for all the Tribunal's "special section" cases. The special section cases include section 71 access to worker file cases, section 23 employer requests for medical examination and section 17 cases on the right to maintain civil actions for damages.

However, the Intake Department is not responsible for rehabilitation or re-employment issues under sections 53 and 54 of the Act. These special section cases are handled by a senior TCO lawyer.

The legal aspects of Intake work are carried out under the review of TCO lawyers. Special section cases constitute approximately 32 per cent of the Tribunal's incoming cases and often involve complex legal issues.

The Intake Department is headed by the Intake Manager.

Case Description Writers

Case Description Writers are responsible for preparing all cases for hearing according to a standardized model and within certain time limits.

The Case Description group works under the supervision of a senior TCO lawyer.

Pre-hearing Legal Workers

When the case description is complete, the case is scheduled and transferred either to a legal worker or to a lawyer. Approximately 90 per cent of cases are handled by legal workers. These legal workers deal with matters that arise pre-hearing and provide assistance to the parties if there are questions respecting the preparation of the cases.

Lawyers

Lawyers handle a small number of the most complex cases, involving novel legal issues or issues which have been identified as involving a significant Tribunal interest.

At the request of the hearing panel, lawyers may attend hearings to cross-question witnesses or may provide the panel with evidence, usually in the form of expert evidence from one of the Tribunal's medical assessors. The purpose of these functions is to ensure that there is an adequate record before the panel. Lawyers may also make submissions on matters of law either by way of written submissions or orally at the hearing, when this is requested by the hearing panel. However, TCO lawyers do not make submissions on issues of fact and all submissions are presented in as neutral a manner as possible.

Lawyers also provide assistance to legal workers and supervise many of the functions carried out by legal workers.

In both 1992 and 1993, there were five lawyers in TCO, exclusive of the General Counsel, as well as one articling student. Major issues which required lawyer input continued to include questions of legislative interpretation in re-employment appeals and issues related to stress claims.

TCO lawyers also handle applications for judicial review and other court related matters.

Post-hearing Legal Workers

When the panel identifies that additional information is required after a hearing, a request is made to the post-hearing legal workers, who coordinate this continuing investigation. The post-hearing legal workers are headed by the Senior Legal Worker, Post Hearing.

Medical Liaison Office

The Medical Liaison Office (MLO) co-ordinates and oversees all of the Tribunal's interactions with the Medical Community and facilitates the Tribunal's use and understanding of medical evidence.

Because the Tribunal has an interest in ensuring that hearing panels have sufficient and appropriate medical evidence on which to base decisions, all case descriptions are reviewed by the MLO for the purpose of identifying those cases in which the medical issues may be problematic, complex or novel to the Tribunal. Those cases selected from this process are referred to the Tribunal's Medical Counsellors to be sure that the medical assessment of the worker's injury is complete, that the record contains opinions from appropriate experts when required and that questions or concerns about the medical issues that may need clarification for the hearing panel are identified.

At the pre-hearing stage, counsellors may recommend getting more information from the patient's attending physician(s). In addition, counsellors may recommend Medical Assessor opinion if the diagnosis of the worker's condition is unclear, or if there is a complex medical problem that needs explanation, or if there is an obvious difference of opinion between qualified experts.

At the post-hearing stage, panels requesting further medical investigation, may request the assistance of the MLO in preparing specific questions that may be helpful in resolving medical issues that are troubling to the panel. Counsellors assist MLO in providing additional questions for the hearing panel's consideration.

In addition to case specific medical evidence issues, the MLO co-ordinates the Tribunal's medical audit of decisions for the purpose of obtaining from the Medical Counsellors a medical professional's perspective on the manner in which medical facts or theory are treated or recorded in Tribunal decisions. The audit permits the Tribunal to evaluate its processes and practices as they relate to medical issues and medical evidence, and to further educate Tribunal members and staff through medical education initiatives.

MLO continues to place in the WCAT Library, medical reports and transcripts of WCAT experts on medical/scientific issues that contain information that may be useful in future appeals. These reports and transcripts have been anonymized and literature cited in reports has been placed in the Tribunal's vertical file. This collection of medical reports specific to issues that arise in the workers' compensation field is unique within the Ontario WC system and is accessible to the public. Discussion papers on general medical topics that frequently arise in compensation matters prepared by the Tribunal's Medical Counsellors or Medical Assessors are also available in the Library.

The above material was identified by the Occupational Disease Task Force (appointed by the Ontario Minister of Labour in 1991 to investigate research and information resources respecting occupational diseases) as a significant component of the Province's resources for gathering and disseminating information and research respecting occupational diseases.

Database

In 1993, the MLO began to use a database designed by the Chief Information Officer to help track the nature of medical issues at the Tribunal, the type of investigations conducted by the office, decisions using this evidence, and which assessors provided expert evidence to the Tribunal. The database can be searched by WCAT number, decision number, medical issue, and

assessor or counsellor, and will help the MLO analyze the nature and extent of its workload and of the medical investigations conducted by the Tribunal. It is also expected that the database will give us a clearer idea of what information exists within the Tribunal that may be useful in appeals with similar medical fact situations.

Medical Counsellors

One of the Tribunal's original Medical Counsellors, Dr. Tom Morley, (neurosurgeon) resigned at the end of 1992. Dr. Morley contributed significantly to the Tribunal's growth and development in respect of medical matters. Particularly noteworthy, is a paper he wrote entitled "Legal and Medical Attitudes — Aspects of Causation", published by the Tribunal in the *Compensation Appeals Forum*, Volume 4, No. 1, 1989. This document is part of the training material provided to new panel members.

Replacing Dr. Morley since January 1993, has been Dr. Ross Fleming, previously a WCAT Assessor. Dr. Fleming is an experienced neurosurgeon, who, for nearly twenty years was Head, Division of Neurosurgery at Toronto Western Hospital. He is currently a professor in the Department of Surgery, University of Toronto, and has served on the executive of many distinguished professional societies, nationally and internationally.

Medical Assessors

The Tribunal continues to retain and attract to its Medical Assessor roster many of the Province's most distinguished medical experts. A concerted effort has been made to recruit qualified female physicians and doctors with diverse cultural and language backgrounds.

INFORMATION DEPARTMENT

Library Activities

Acquisitions and Database Growth

Acquisitions (that is, documents added to the library) have traditionally been used as a method for indicating the growth or stability of a library's collection. While these figures continue to provide useful information about the physical size of the library, another indication of library activity is database growth. The following figures reflect both indicators. Database growth indicates not only documents acquired, but also access points created to those documents.

During the reporting period, 498 books and government documents were added to the collection, 215 entries were added to the Juris database (case name index of judicial decisions) and 2,844 entries were added to the Library database (periodical and vertical file index). Nine hundred and twenty-one documents were acquired through interlibrary loan.

Subscriptions

Serials and looseleaf textbooks were evaluated with a view to cancelling less essential titles. Sixteen serial titles and seven looseleaf services were cancelled during the year.

An examination of the looseleaf textbooks revealed that it is more cost effective to replace the entire book every two or three years rather than keep it constantly up to date. In future only critical titles will be kept up to date with the looseleaf service. A review of these titles will be carried out annually.

Reference and Information Services

Demand for these services continues to rise. The introduction of the *DDS On Disk* service in January 1993 has led to a decline in requests from out of town for online searches of WCAT Decision Summaries. Nevertheless we answered more queries in 1993 than 1992. In 1992 (the first year we kept consistent records of the number of inquiries), 910 reference questions were answered and assistance given with 687 directional inquiries. For 1993, the figures were 1,064 and 757. Reference questions range from straightforward searches in one of the library's databases which may be accomplished in a short time to complex research projects involving manual and database searching of our own resources and in external databases and library collections. Directional inquiries involve directing a client to document locations and providing information regarding library resources and services.

External clients continue to form a significant part of our clientele both in person and on the telephone.

Book Selection

Books and other documents are now selected by committee with input from the librarians providing reference services.

Online Catalogue

Library staff made use of the computer records for the Library's book collection located on an external bibliographic utility, Utlas. The records were downloaded from Utlas and read into a database on the Library's in-house system, Cardbox-Plus. The book collection can now be searched in the Cardbox-Plus "Books" files in the Library. The in-house system has proved to be a cost saving alternative allowing for streamlined cataloguing procedures and providing the flexibility and currency afforded by an online public access catalogue.

Improved Database Access

The Library maintains and provides access to several Tribunal databases, including summaries of the Tribunal's decisions and an index to the Library's vertical files. These databases are accessible to both WCAT staff and the public.

A series of manuals were written to provide Cardbox Plus users with detailed instruction in searching each of the Library's in-house databases. Other user documentation includes a more general user guide and a manual aimed specifically at *DDS On Disk* users. (Please see note under Publications Department for a description of the new *DDS On Disk* service)

Other steps taken to make the Library's databases more "user-friendly" included designing simpler display screens, adding an introductory screen explaining the content of each database and allowing for switching between databases at the touch of a computer key.

Publications

DDS On Disk

A database containing summaries of the Tribunal's decisions has been available for public research in the Tribunal's Library for several years. The *DDS On Disk* service was introduced to make this database available to subscribers to perform searches on their own premises. Subscribers will be able to search the database by keywords, decision number, release date, panel members or materials considered by the decision. As the service is provided on disks (updated

monthly) there are no on-line charges. The *DDS On Disk* became available to subscribers early in 1993.

WCAT Online

WCAT Online continues to be available to subscribers as a full-text database, but it will be transferred from Southam Electronic Publishing's *Private File Service* to *Infomart Online*, early in 1994. Southam will be assuming the costs of storing and maintaining the database, which previously were paid by the Tribunal. Users will benefit from the superior search and display capabilities of Infomart's search software. Subscribers to *Infomart* will have access to several legal, news and business-oriented databases, as well as to *WCAT Online*.

Project to Improve Research Services

The Tribunal's print and electronic research services rely on keyword terms as the main access point to the Tribunal's decisions. In March 1988, an improved set of keyword terms was introduced for the classification of issues arising in subsequent Tribunal decisions. As the prior decisions (approximately 2,000) remained keyworded with the original set of terms, researchers have since had to search two sets of keyword terms when researching Tribunal decisions.

A project has been completed which re-keyword all of the decisions that were classified with the original keyword terms, replacing them with the new keyword terms introduced in March 1988. A single set of keywords will greatly simplify the research process. Also, some older decisions had been keyworded, but were not summarized. A summary is now provided for every decision released by the Tribunal.

These improvements have already been introduced into the databases (*DDS On Disk* and *WCAT Online*). They will appear in the *Decision Digest Service* over the next year.

W.C.A.T. Reporter

The *W.C.A.T. Reporter* contains the full text and headnotes of selected Tribunal decisions which cover a broad range of compensation issues. The Reporter has been published by the Tribunal in conjunction with Carswell. Beginning in 1994, the Tribunal will be publishing the Reporter on its own. With the Publications Department assuming this extra workload, the Tribunal will realize substantial savings.

Decision Digest Service (DDS)

Several adjustments were required to the DDS binders as a result of the renumbering of the *Workers' Compensation Act* that resulted from the introduction of the *Revised Statutes of Ontario, 1990*.

1. All keyword terms that used to contain a reference to a section number of the Act have been revised so as to identify the relevant issue by subject matter, rather than by section number. For example, the keyword term "Section 15 application" has been replaced by "Right to sue".
2. The section headings of the Act found in the consolidated *Annotated Statute (1985 - April 26, 1991)* continue to be based on the R.S.O. 1980 numbering of the Act while the section headings of the Act found in the cumulating *Annotated Statute* segment of the *Cumulative Index* binder use the R.S.O. 1990 numbering of the Act.
3. The *Section 15 Index* has been renamed the *Section 17 Index* to reflect the change in the numbering.

Practice Directions

The Tribunal's practice directions have also been revised to reflect the renumbering of the sections of the Act brought about by the R.S.O. 1990. Those practice directions which had a section of the Act as part of their title, were renamed.

Leaflet

The leaflet was first introduced in 1992. It is a plain language introduction to the Tribunal entitled *This Is the Workers' Compensation Appeals Tribunal*. The leaflet has decreased our reliance on the pamphlet, *A Straightforward Guide to the Workers' Compensation Appeals Tribunal*, which is a more expensive publication and contains more detailed information than is necessary for a general introduction to the Tribunal.

Depository Library Programme

The *W.C.A.T. Reporter* and the *Decision Digest Service* binders were made available, at no charge, to all full depository libraries in the Ontario Government's depository library programme. As these libraries are located throughout Ontario, accessibility to the Tribunal's decisions for researchers who are unable to use the Tribunal Library in Toronto has been much improved.

Photocopy Service

Copies of the Tribunal's decisions are available through its Photocopy Service. A premium-priced Rush Service was added to the Standard Service.

Compensation Appeals Forum

The *Compensation Appeals Forum* was discontinued due to a lack of interest in submitting original contributions.

SYSTEMS DEPARTMENT

New Computer System

During the first half of 1992, the testing and evaluation of the Tribunal's new computer system was completed and the system was accepted. This project started with Management Board of Cabinet's approval of a business case prepared by the Tribunal in 1991. The business case called for the replacement of the organization's aging computer system to correct a serious overload situation that existed and to provide adequate computer resources for future application enhancements.

Case Tracking

During 1991, a dBASE-based Case Tracking system was developed, using the Tribunal's minicomputer as the PC network server. Early in 1992, the new application was introduced throughout the Tribunal, by means of small training seminars conducted by the staff of the Statistics and Research Department. The successful start-up of this end-user application has led to faster and easier delivery of statistical information about cases and caseload.

Once the Case Tracking application was in use by all departments, focus group sessions were organized to provide users with an opportunity to identify additional requirements and to assess its acceptance as a productivity tool. Meetings began in November 1992 and examined four basic questions: 1) How do departments use the system? 2) What are the incentives for using the system? 3) What discourages the use of the system? 4) What further enhancements can be made to the system?

Slow response times were identified by users as a major shortcoming. It was determined that this was caused by the large size of the database and a project was begun to create an archiving capability.

The primary database now accessed is comprised of open cases. Closed cases are archived into two separate databases. The first database contains recently closed case histories. This information resides on the Tribunal main computer and can be viewed on-screen and included along with active case information when generating reports. Cases closed for more than two years are transferred to the second database. This database is maintained off-line and if retrieval of a case is necessary it is accessed overnight using a special automated routine.

Since active cases are accessed the most often, and comprise a relatively small portion of the overall data, satisfactory performance levels were reached by the end of 1992. Further refinements were carried out concurrent to the archive creation. These included the upgrading of the database software, the streamlining of the log-on procedure used to enter the system and the expansion of the hours during which the system can be used.

Other PC Based Applications

A PC-driven accounting package was installed in the Tribunal's Financial Department. This replaced what had been a fully manual accounting process. As a result, financial statements and daily financial reports are quickly and easily generated, answers to questions concerning financial matters are provided sooner and detailed financial analysis can be made without having to consult cumbersome paper records.

A multi-user, network version of the Tribunal's in-house database software Cardbox-Plus was mounted on the main computer system. This eliminates the time-consuming task of manually exchanging data between PCs, and makes easier the routine maintenance and backup of information. At present only the staff of the Library and Publications Department have access to this software.

The Systems Department supported the Publications Department in the development of a distribution copy of the in-house Cardbox-Plus database of decisions summaries. Using a read-only version of Cardbox-Plus, this new service, *DDS On Disk*, was offered to subscribers in 1993 and the subscriber list continues to grow.

The Tribunal connected to the Ontario Government CORPAY payroll system. Use of HR TimeServer should begin during 1994.

A microcomputer specialist was added to our staff in 1993 to support the growing number of PC applications in use at the Tribunal.

Information Technology Security Guidelines

A document outlining security issues arising from the use of computers to create, process, store and disseminate information was developed and distributed to staff. The *Information Technology Security Guidelines* provides staff with information about how to protect the documents and data stored in their computers from destruction or inadvertent disclosure. This document reflects the concerns raised by the *Freedom of Information and Protection of Privacy Act* and the Ontario Government's Management Board of Cabinet Directive on Information Technology Security, both of which address issues of confidentiality, integrity and availability of information collected, stored and accessed using computers. The trend toward greater dependence on computer technology at the Tribunal gave this project particular importance and priority during 1992. The guidelines were distributed during seminars that all staff and OIC appointees were required to attend.

Help Desk

In recognition of the increasing reliance on computer applications, the Systems Department set up a Help Desk which is staffed by a member of the department. The aim of the Help Desk is to provide a faster response to routine, system-related problems encountered by Tribunal staff.

Minicomputer Performance

As applications were being implemented on the LAN utilizing the VAX Server, a noticeable and serious drop in performance for other VAX based applications was noticed. The problem was tracked to a conflict when running our two main applications simultaneously on the same processor.

Discussions with our hardware and software service provider (Digital) are ongoing, but a separate, dedicated Microcomputer Server was installed and testing has begun to determine if this is the appropriate solution.

Computerized Accommodations for Disabled Members

To facilitate connection to our computer system by a blind OIC member, a subsystem was purchased and implemented. This system included a microcomputer with a voice synthesizer to verbally read information on the screen. In addition, a scanner was set up so that information available on hard copy only could be imaged and read out to the panel member. Finally, a Braille printer was added so that information could be printed for use by the panel member during hearings or in regular day-to-day work.

To accommodate decision-writing by a Vice-Chair who is confined to a wheelchair and has very restricted arm and hand movement, a special system for connecting to the main computer system was devised. A microcomputer was installed that has a voice-activated system customized to the Vice-Chair's voice that will execute the normal commands in response to the Vice-Chair speaking the appropriate commands into a special microphone.

STATISTICAL SUMMARY

This statistical report represents a detailed summary of the Tribunal's recent production and case inventory trends. The summary begins with an accounting of the numbers and types of cases received by year. This is followed by a section providing the numbers and types of cases closed. A third section details the current caseload (the cumulative difference between cases received and cases closed). In the fourth section we discuss typical overall case completion times. The two key production measures, hearings and decisions, are then examined in detail. Hearings representation profiles are presented regionally for workers and for employers, and the decisions and hearings counts are tabulated.

Cases Received

The incoming caseload for 1993 increased markedly over the totals received in the three previous years (Figures 4 and 5, pp. 36 and 37). At 2,150, the 1993 total represented a 42 per cent increase against the 1990 figure, a 38 per cent increase against the 1991 figure and a 19 per cent increase against the total for 1992.

Examining case types separately, we note that the total incoming caseload increase was driven by increases in most of the entitlement categories (pension and commutation, reinstatement, vocational rehabilitation, NEL/FEL, and general entitlement) as well as in the category defined by appeals initiated under section 71 of the *Workers' Compensation Act* (access cases). Despite the overall increasing trend, some categories experienced decreases, including leave cases (applications under section 94 of the Act), and medical exams (applications under section 23 of the Act). There has also been a gradual reduction in the number of post-decision cases (Ombudsman's investigations, judicial reviews and requests to reconsider earlier WCAT rulings).

Cases Closed

In 1993, the Tribunal closed 1,864 cases (Figure 6, p. 38). This number represented a 17 per cent increase over the total number of cases closed in 1990. (Against the 1991 total, the increase was 5 per cent, and against the 1992 total, the increase was 12 per cent.)

Entitlement-related cases (including benefits entitlements as well as employer assessments, reinstatement and vocational rehabilitation obligations, and cases that were ultimately deemed non-jurisdictional) represented 56 per cent of the cases closed in 1993, special section cases accounted for 38 per cent, and post-decisions for 6 per cent.

Final decisions were issued in roughly half of the cases closed in 1992 and 1993 (Figure 7, p. 39). Of those closed without final decisions, most (33.8 per cent of all cases closed in 1992 and 1993) were withdrawn. Other dispositions included a finding that the Tribunal did not have jurisdiction (8.5 per cent of all cases closed in 1992 and 1993), case abandonments (2.9 per cent of all cases closed in the period) and case settlements (1 per cent of all cases closed in the period).

The distribution for these dispositions varied by appeal type. For the main group (entitlement-related appeals), 59 per cent were disposed by final decision. (The remainder were withdrawn (20 per cent), deemed non-jurisdictional (15 per cent), or abandoned/other (6 per cent).)

Remaining Inventory

The rising trend in the Tribunal's incoming caseload began in 1991. The increase for 1991 was relatively minor, and that year, the Tribunal closed 216 cases more than it opened. In 1992, the incoming caseload increased more sharply, but the Tribunal's production (case closings) did not keep pace. As a result, the inventory grew by 140 cases. In 1993, the incoming caseload rose to unprecedented levels, and although the production also rose to near peak levels, the inventory none the less expanded by another 286 cases. By December 31, 1993, the total inventory had climbed to 1,746 cases. (Refer to Figure 8, p. 39)

This total inventory was divided into three groups: appeals active at the Tribunal, appeals inactive at the Tribunal and post-decision issue cases. Of the inactive appeals, 237 were at the preliminary intake stage (waiting for applications to be completed). Another 280 cases were inactive pending their hearing date. (These cases had been scheduled but could not proceed until the hearing date arrived.) Of the 1,123 active appeals, 37 were awaiting assignment to pre-hearing officers who would gather the facts of the case and prepare case descriptions. One hundred and forty-four were in the case description process and another 172 were at other pre-hearing stages. One hundred and ninety-five were in the scheduling workload. There were 575 cases at post-hearing stages, of which 291 were formally assigned for Tribunal follow-up in the post-hearing department. (Typically these cases were adjourned with panels requesting further medical evidence.) Two hundred and fifty-two cases were at decision-writing stages, and 32 were all but closed formally. The remaining 106 cases in inventory related to post-decision issue requests where the Tribunal was being asked to reconsider earlier rulings (60 cases), or where there was an Ombudsman's investigation (41) or judicial review application (5) underway (Figure 9, p. 40).

Case Completion Times

The overall median time required to close cases in 1993 was about 5.6 months (170 calendar days). Fifty-two per cent of the completed cases were resolved within six months and 23 per cent were completed between six and 12 months. Thus three-quarters were completed within a one-year time frame. Eleven per cent took between 12 and 18 months, and the remaining 13 per cent required more than 18 months. (Refer to Figure 10, p. 40)

The relevant proportions of cases completed within these same time intervals in 1991 and 1992 are also given in Figure 10. The 1993 figures compare very well against the earlier figures, and the favourable comparison arises in part because of an increase in the number of cases closed without the need for final decision. This is especially true for access cases. Careful examination of the medians reported in Figure 11 (p. 41) reveals somewhat increased processing times for the other appeal types (i.e., those which are more likely to proceed through to the final decision release stage).

Hearings and Decisions

Hearings

In 1993, 1,120 cases went to hearing (or were assigned to Tribunal panels for deliberations). Some of these cases were heard (or assigned) more than once, resulting in a total of 1,239 hearings. In order to achieve the 1,239 hearings, 1,580 scheduling dates had to be arranged. (On occasion, hearings have to be rescheduled due to illnesses or other unavoidable conflicts.) (Refer to Figure 12, p. 41)

Formal oral hearings accounted for 82 per cent of the hearings in 1993. Another 10 per cent of hearings were accounted for by panel reviews of written submissions and other panel caucuses, and the remaining 8 per cent were accounted for by panel deliberations regarding requests to reconsider previous Tribunal decisions.

The Tribunal's formal hearings involve a tripartite WCAT panel (with a Vice-Chair and a Member Representative of Employers and a Member Representative of Workers) and parties are usually also accompanied by representatives.

Representation at Hearings

At approximately 7 per cent of the formal hearings in the 1992-93 period, employers did not appear. When they did appear, their representation broke down as follows: lawyers 35 per cent of the time, consultants 20 per cent, company personnel 19 per cent, Office of the Employer Adviser 11 per cent and other types 8 per cent.

The Office of the Worker Adviser (OWA) was the most common type of worker representative. The OWA represented workers at 29 per cent of the hearings. Unions accounted for worker representation 18 per cent of the time and lawyers or other legal assistants 13 per cent. Consultants accounted for the representation 7 per cent of the time and other types combined for 16 per cent. Workers were unrepresented at the remaining 17 per cent of hearings.

When the figures are examined by region as in Figure 13 (p.42), we note some interesting differences. We note, for example, that in the Northern region, the OWA acted as a representative for workers in approximately 55 per cent of the cases, but it had only a 25 per cent share of the worker representation in the Southern region. Unions represented workers 31 per cent of the time in the Southern region, compared with only 11 per cent in the Eastern region. For employer representation, we note the strong representation by company personnel in the Northern region.

Decisions

In 1993, there were 839 cases closed by decision. This represents a decrease from the 1992 total. (Nine hundred and twenty cases were closed by decision in 1992.) Some of these cases involved more than one decision, (occasionally interim issues had first to be resolved) and in 1993 the total number of decisions reached 907. (This also represents a decrease from the 1992 figures. In 1992, there were 1,074 decisions issued.) The breakdown by appeal type is given in Figure 12 (p. 41) and by decision type in Figure 14 (p. 42). Most of the decisions (778 in 1993) represented final rulings (720 final appeal rulings in 1993 and 58 final rulings on reconsideration matters in 1993) however, there were 129 interim decisions in 1993 as well (123 interim rulings on appeal matters, and six interim rulings on reconsideration matters). Note that interim rulings were more common in 1993 compared with 1992.

FINANCIAL MATTERS

Statements of expenditures with variance reports for the years ended December 31, 1992, and December 31, 1993, are included in this report (Figures 15 and 16, p. 43).

The accounting firm of Deloitte & Touche has completed a financial audit on the Tribunal's financial statements for the periods ending December 31, 1991, and December 31, 1992. The audit reports are included in this report as Appendix C. The audit on the financial statements for the period ending December 31, 1993, is not yet available.

Workers' Compensation Appeals Tribunal
Annual Report 1992 and 1993

TYPE	1990		1991		1992		1993		TOTAL**** (All Years)	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	44	3	31	2	35	2	12	1	723	5
Right to Sue	121	8	127	8	124	7	113	5	918	6
Medical Exam	52	3	65	4	76	4	49	2	531	4
Access	<u>288</u>	<u>19</u>	<u>318</u>	<u>20</u>	<u>370</u>	<u>21</u>	<u>509</u>	<u>24</u>	<u>2569</u>	<u>17</u>
Special Section subtotal	505	33	541	35	605	34	683	32	4741	31
Pension	21	1	2	0	58	3	75	3	703	5
N.E.L./F.E.L. *	n/a	n/a	0	0	3	0	7	0	10	0
Commutation	16	1	6	0	26	1	30	1	179	1
Employer Assessment	26	2	6	0	25	1	23	1	196	1
Entitlement	746	49	788	51	816	45	854	40	7198	48
Reinstatement	1	0	31	2	39	2	46	2	117	1
Vocational Rehabilitation **	n/a	n/a	1	0	19	1	60	3	80	1
No Jurisdiction	31	2	31	2	101	6	59	3	610	4
Preliminary (no type) ***	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>191</u>	<u>9</u>	<u>191</u>	<u>1</u>
Entitlement subtotal	841	55	865	55	1087	60	1345	63	9284	61
Judicial Review	10	1	4	0	7	0	9	0	45	0
Ombudsman	82	5	65	4	44	2	50	2	504	3
Reconsideration	81	5	85	5	61	3	63	3	541	4
Clarification	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>4</u>	<u>0</u>
Post-decision subtotal	173	11	154	10	112	6	122	6	1094	7
TOTAL INCOMING	1519		1560		1804		2150		15119	

* Note: This category represents appeals related to the non-economic loss and future economic loss pension criteria introduced by Bill 162.

** Note: This category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

*** Note: This category represents cases which have yet to be classified by appeal type.

**** Note: The TOTAL (All Years) category represents all cases, including those received prior to January 1, 1990.

Figure 4 -- INCOMING CASES

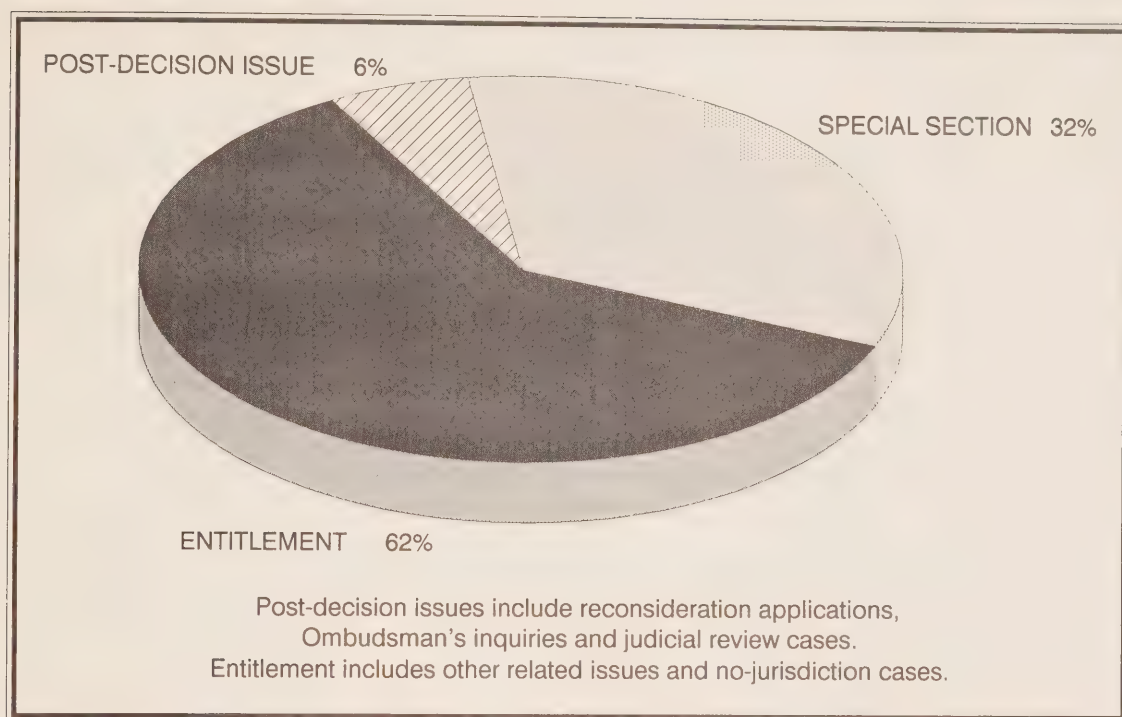


Figure 5 -- INCOMING CASE LOAD BY TYPE

Workers' Compensation Appeals Tribunal
Annual Report 1992 and 1993

TYPE	1990		1991		1992		1993		TOTAL *** (All Years)	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	56	4	55	3	29	2	31	2	711	5
Right to Sue	118	7	108	6	113	7	101	5	799	6
Medical Exam	46	3	66	4	70	4	54	3	514	4
Access	309	19	313	18	389	23	521	28	2487	19
Special Section subtotal	529	33	542	31	601	36	707	38	4511	34
Pension	99	6	172	10	50	3	63	3	624	5
N.E.L./F.E.L. *	n/a	n/a	0	0	1	0	3	0	4	0
Commutation	29	2	10	1	10	1	26	1	154	1
Employer Assessment	29	2	22	1	24	1	17	1	168	1
Entitlement	684	43	792	45	729	44	801	43	6214	46
Reinstatement	0	0	4	0	31	2	32	2	67	1
No Jurisdiction	34	2	38	2	89	5	72	4	610	5
Vocational Rehabilitation **	0	0	0	0	5	0	25	1	30	0
Entitlement subtotal	875	55	1038	58	939	56	1039	56	7871	59
Judicial Review	3	0	8	0	4	0	15	1	40	0
Ombudsman	103	6	112	6	53	3	42	2	463	3
Reconsideration	82	5	76	4	67	4	61	3	484	4
Clarification	1	0	0	0	0	0	0	0	4	0
Post-decision subtotal	189	12	196	11	124	7	118	6	991	7
TOTAL CLOSED	1593		1776		1664		1864		13373	

* Note: This category represents appeals related to the non-economic loss and future economic loss pension criteria introduced by Bill 162.

** Note: This category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

*** Note: The TOTAL (All Years) represents all cases, including those closed prior to January 1, 1990.

Figure 6 -- CASES CLOSED

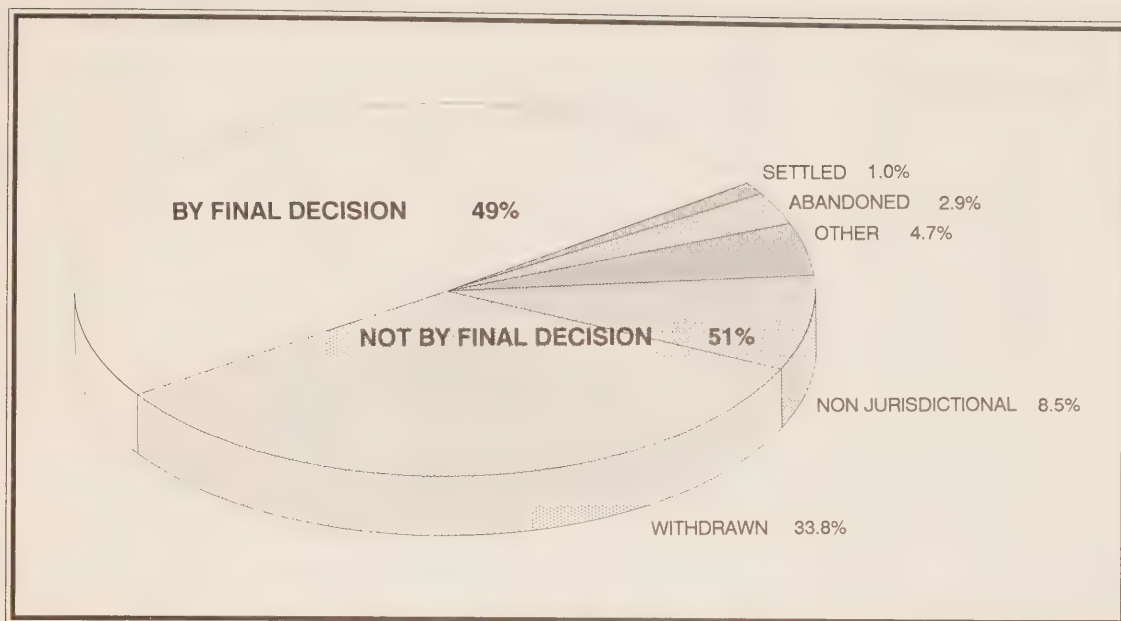


Figure 7 -- DISPOSITION TYPE FOR CASES CLOSED

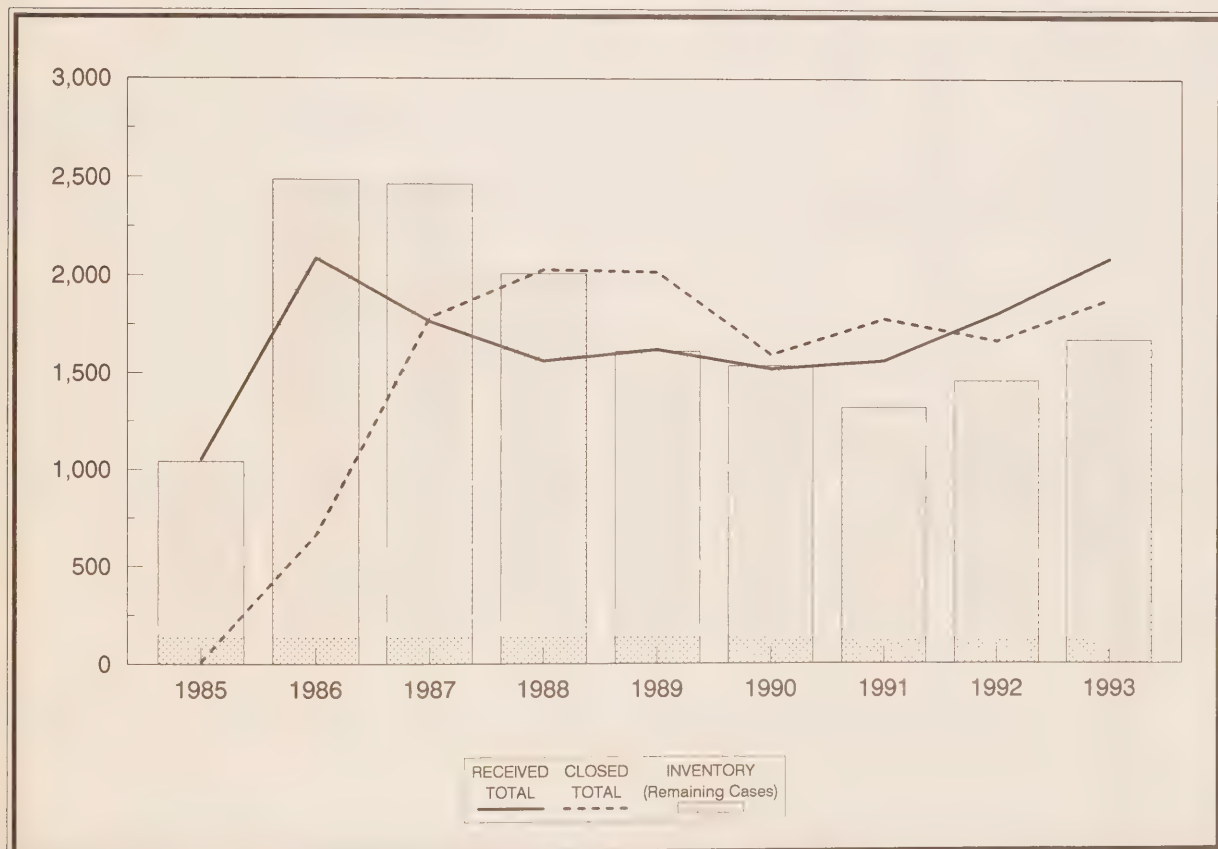


Figure 8 -- INCOMING FILES AND FILES COMPLETED

A) INACTIVE CASES

Intake: Awaiting case information	237	
Pre-hearing: Awaiting hearing date	280	<u>517</u>

B) ACTIVE CASES

Pre-hearing assignment	37	
Case description writing	144	
Pre-scheduling	172	
Scheduling	195	
Post-hearing	291	
Decision writing in progress	252	
File closing	32	<u>1123</u>

C) POST-DECISION ISSUES

Ombudsman review cases	41	
Requests for reconsideration	60	
Judicial review	5	<u>106</u>

TOTAL AS AT DECEMBER 31, 1993

1,746

Figure 9 -- STATUS OF OPEN CASES

PERCENTAGE OF CASES COMPLETED

	Within 6 Months			6 to 12 Months			12 to 18 Months			More Than 18 Months		
	1991	1992	1993	1991	1992	1993	1991	1992	1993	1991	1992	1993
Right to Sue	54	38	28	25	38	33	14	13	20	7	11	18
Med Exam and Access	78	78	93	18	20	6	3	1	1	1	2	0
Entitlement-related *	26	31	34	33	33	31	19	15	17	22	21	19
Post-decision Issues	39	43	44	32	36	32	13	10	6	16	10	18
ALL CASES	39	45	52	26	30	23	13	11	11	22	14	13

* Note: The 'entitlement-related' category refers to entitlement appeals, pension appeals, leave applications, reinstatement appeals, employer assessment appeals and pension commutation issues.

Figure 10 -- DISTRIBUTION OF COMPLETION TIMES

APPEAL TYPE	Closed in 1992 (median)	Closed in 1993 (median)
Medical Exam and Access	94	48
Right to Sue	236	293
Entitlement-related	264	273
Post-decision issues	204	189
ALL CASES	201	170

Figure 11 -- AGING ANALYSIS FOR ALL CASES CLOSED

APPEAL TYPE	SCHEDULING DATES ARRANGED	HEARINGS*	CASES HEARD	DECISIONS ** ISSUED	CASES DISPOSED BY DECISION **
1992					
Right to sue	139	91	70	68	55
Medical exam	80	39	34	29	25
Access	136	136	133	147	142
Leave to appeal	25	23	23	23	17
Entitlement/Other	922	847	739	737	619
Reconsideration	95	95	77	70	62
TOTAL	1,397	1,231	1,076	1,074	920
1993					
Right to sue	136	85	72	63	63
Medical exam	49	19	19	21	17
Access	110	93	91	83	87
Leave to appeal	21	21	21	21	23
Entitlement/Other	1164	921	837	655	595
Reconsideration	100	100	80	64	54
TOTAL	1,580	1,239	1,120	907	839

* Note: Hearings include oral hearings, written submissions and panel assignments for reconsideration requests.

** Note: Decision types include Final, Interim and Reconsideration.

Figure 12 -- HEARINGS AND DECISIONS

Type of Representation by Region	Eastern (%)	Northern (%)	Southern (%)	Toronto (%)	TOTAL (%)
EMPLOYER					
Company Personnel	24	42	16	18	19
Consultant	5	5	28	21	20
Lawyer	48	31	21	36	35
No Representation	9	4	5	7	7
Office of Employer Adviser	9	11	18	11	11
Other	<u>5</u>	<u>7</u>	<u>12</u>	<u>7</u>	<u>8</u>
TOTAL	100	100	100	100	100
WORKER					
Consultant	0	1	3	8	7
Lawyer or legal aid/asst.	22	7	13	14	13
No Representation	20	8	9	20	17
Office of Worker Adviser	29	55	25	26	29
Other	18	11	19	16	16
Union	<u>11</u>	<u>18</u>	<u>31</u>	<u>16</u>	<u>18</u>
TOTAL	100	100	100	100	100

NOTE: The overall representation proportions are most similar to the Toronto proportions because most hearings were conducted there. The Eastern region is represented by WCAT hearings in Ottawa, the Northern region by Sault Ste. Marie, Sudbury, Timmins, and Thunder Bay hearings, and the Southern region by London and Windsor hearings.

Figure 13 -- HEARINGS REPRESENTATION PROFILE

	1992	1993
APPEAL ISSUES		
Interim	100	123
<u>Final</u>	<u>904</u>	<u>720</u>
Subtotal	1,004	843
RECONSIDERATION ISSUES		
Interim	10	6
<u>Final</u>	<u>60</u>	<u>58</u>
Subtotal	70	64
TOTAL	1,074	907

Figure 14 -- DECISIONS ISSUED

WORKERS' COMPENSATION APPEALS TRIBUNAL 1992 STATEMENT OF EXPENDITURES AND VARIANCE As at December 31, 1992 (in \$000's)				
	1992 BUDGET	1992 ACTUAL	VARIANCE	
			\$	%
Salaries and Wages	6,437.0	6,445.0	(7.0)	(0.11)
Employee Benefits	929.0	1,081.0	(151.0)	(16.25)
Transportation & Communication	483.0	480.0	3.0	0.62
Services	2,998.0	2,672.0	327.0	10.91
Supplies & Equipment	325.0	246.0	79.0	24.31
TOTAL OPERATING EXPENDITURES	11,172.0	10,924.0	251.0	2.25
Capital Expenditures	25.0	12.0	13.0	52.00
TOTAL EXPENDITURES	11,197.0	10,936.0	264.0	2.36

Figure 15 -- STATEMENT OF EXPENDITURES WITH VARIANCE

WORKERS' COMPENSATION APPEALS TRIBUNAL 1993 STATEMENT OF EXPENDITURES AND VARIANCE As at December 31, 1993 (in \$000's)				
	1993 BUDGET	1993 ACTUAL	VARIANCE	
			\$	%
Salaries and Wages	6,566.0	6,461.0	105.0	1.60
Employee Benefits	1,018.0	1,063.0	(45.0)	(4.42)
Transportation & Communication	506.0	354.0	152.0	30.04
Services	2,947.0	2,741.0	206.0	6.99
Supplies & Equipment	295.0	187.0	108.0	36.61
TOTAL OPERATING EXPENDITURES	11,332.0	10,806.0	526.0	4.64
Capital Expenditures	180.0	12.0	168.0	93.33
Social Contract Commitment	0.0	245.8	(246.0)	0.00
TOTAL EXPENDITURES	11,512.0	11,064.0	448.0	3.89

Figure 16 -- STATEMENT OF EXPENDITURES WITH VARIANCE

APPENDIX A

GUIDELINES FOR REVIEW OF DRAFT DECISIONS

1. The Tribunal has recognized from its inception that its decision draft review process must be fully respectful of Hearing Panels' independence and autonomy.
2. The purpose of the Tribunal's decision draft review as described most recently in the 1990 Annual Report (p. 6) is "maintenance of the general quality and consistency of the Tribunal's decisions and ... the continued coherence and usefulness of the Tribunal's developing jurisprudence".
3. In *Consolidated-Bathurst* and in *Tremblay*, the Supreme Court of Canada has confirmed that fostering the quality and reasonable consistency and coherency of decisions is a legitimate and important institutional role for tribunals.¹ The Court specifically approved internal consultation processes designed to influence (but not to constrain) decision-makers on generic, legal and policy issues. It also explicitly recognized that the importance of adjudicative coherence amongst tribunal decisions is a criterion that is relevant for individual tribunal adjudicators.²
4. Decision draft review is one of the Tribunal's processes for fostering the quality — including especially the consistency and coherence — of its decisions. The review process is the responsibility of the Office of the Counsel to the Chair (OCC) which Office is comprised of the Counsel to the Chair and her associate counsel. The purpose of the review is to check draft decisions referred for review by panel members against the Tribunal's "Hallmarks of Decision Quality". These "Hallmarks" were adopted by the Tribunal in written form in 1989 in its "Statement of Mission, Goals and Commitments". A copy of the "Hallmarks" is attached to [the Members' Code of Professional Responsibility].
5. In accordance with the fundamental principle that the power to decide rests with the Hearing Panel, it is for the Hearing Panel or any of its members to request review of a draft decision. But in considering whether a draft decision ought to be referred for review, panel members will have in mind their responsibilities as adjudicators to ensure that their decisions comply reasonably with the Tribunal's Hallmarks of Quality, and, in particular:
 - 1) that their decisions are coherent relative to prior Tribunal decisions;
 - 2) that with respect to previous decisions dealing with like issues, their decisions are reasonably consistent (unless they are satisfied that such prior decisions can be distinguished on their facts or are wrong).

¹ *Consolidated-Bathurst Ltd. v. International Woodworker's of America Local 2-69* (1990), 68 D.L.R. (4th) 524 at pp. 555, 562-563, 567; and *Tremblay v. Quebec (Commission des Affaires Sociales)* (1992), 90 D.L.R. (4th) 609 at pp. 621-623, 624-625

² *Consolidated-Bathurst*, per Gauthier, at p. 562:

"A decision-maker may also be swayed by the opinion of the majority of his colleagues in the interest of adjudicative coherence since this is a relevant criterion to be taken into consideration even when the decision-maker is not bound by any *stare decisis* rule."

6. In deciding whether to request OCC review of a draft decision, panel members are requested to consider particularly the criteria set out in paragraph 10 of these Guidelines. However, any panel member may request review of any draft decision at any time. Where a panel member requests review of a draft minority or majority decision, it is helpful for counsel to have an opportunity to review both drafts.
7. As an expert appeal body deciding difficult medical and legal issues, the Tribunal is concerned with providing training to its new members. As part of their training, new Vice-Chair appointees are required to write at least one mock decision and submit it to OCC for draft review. Once assigned to hearings, new Vice-Chairs are asked to consider the following guidelines in deciding whether to request draft review:
 - a) New Vice-Chair appointees with no previous workers' compensation experience are encouraged to submit their first 20 entitlement cases; first five right-to-sue, access and medical examination decisions; and first two leave-to-appeal decisions.
 - b) New Vice-Chair appointees with previous workers' compensation experience are encouraged to submit their first 10 entitlement decision; first three right-to-sue, access and medical examination decisions; and their first leave-to-appeal decision.
8. Draft review during the orientation period for new Vice-Chairs is intended to assist new Vice-Chairs in the development of their workers' compensation knowledge, writing skills and understanding of the Tribunal's "Hallmarks of Decision Quality".
9. Unless a panel member specifies draft review by a particular member of OCC, the review will be done by the first available counsel. Requests for review of a second draft will be referred to the counsel who reviewed the first draft, unless the person requesting review specifies otherwise.
10. Review of a draft decision would seem particularly indicated where the decision:
 - a) addresses a new development issue or an issue that is for other reasons of particular current, Tribunal-wide interest;
 - b) may be expected because of its nature to lead to media attention, a judicial review application, an Ombudsman complaint, or a reconsideration request;
 - c) departs from the approach previously taken in Tribunal decisions;
 - d) affects Board policy or practice; or
 - e) involves a dissent on a significant issue.
11. From time to time, the Chair or Counsel to the Chair may identify certain issues that in their view should be seen for purposes of the draft review process as currently of particular Tribunal-wide interest.
12. Drafts referred for review will not be shared by OCC counsel with the Tribunal Chair or with any member of the Tribunal other than the referring member unless instructed by the member to the contrary. Counsel may, however, discuss drafts amongst themselves.
13. On any generic issue of law or policy, any member of a hearing panel is welcome to consult at any time with any other member of the Tribunal, including with the Tribunal Chair.
14. Counsel's comments regarding a draft decision will be forwarded to the panel member who requested draft review. It is the responsibility of that member to bring significant issues to the attention of the other members of the Hearing Panel.

15. After reviewing a draft, OCC counsel may occasionally suggest that it would be helpful to review a second draft of the decision. The decision whether to request review of the second draft rests with the panel member who requested review of the first draft.
16. OCC counsel are available to discuss any legal question with any panel member, or to provide research assistance, before or after a draft is written.
17. Where, as a result of OCC draft review (or, indeed, for any reason), a Hearing Panel decides that it must address an issue or an authority that was not in view at the hearing, the Panel must consider whether natural justice requires that the parties to the case be given an opportunity to make further submissions, or to lead further evidence.
18. OCC will meet regularly with the Tribunal Chair to review newly *released* decisions and to discuss issues and problems of current concern, generally.
19. If, in the course of their work, OCC counsel encounter a draft decision that is pertinent to a generic issue or problem that they expect would be of special interest to the Tribunal Chair, they may advise the referring member of the Chair's likely interest. They shall not, however, mention that advice to the Tribunal Chair nor bring the draft to his or her attention in any other manner.

APPENDIX B

VICE-CHAIRS AND MEMBERS IN 1992-93

Full-time

Chair

Ellis, S. Ronald

Date of First Appointment
as a Full-time Member

October 1, 1985

Alternate Chair

Kenny, Lila Maureen
Onen, Zeynep

September 1, 1991¹
August 1, 1993

Vice-Chairs

Bigras, Jean Guy
Cook, Brian
Frazee, Catherine
Kenny, Lila Maureen
McCombie, Nick
McIntosh-Janis, Faye
Moore, John P.
Newman, Elaine
Onen, Zeynep
Sandomirsky, Janice R.
Signoroni, Antonio
Strachan, Ian

May 14, 1986
September 6, 1991
November 1, 1992
July 29, 1993
January 22, 1991
May 14, 1986
July 16, 1986
February 1, 1991
October 1, 1988²
July 3, 1990
October 1, 1985
October 1, 1985

Members Representative of Workers

Cook, Mary
Crocker, Jim
Heard, Lorne (on leave)
Jackson, Faith
Lebert, Raymond J.
Robillard, Maurice
Shartal, Sarah
Thompson, Patti

November 1, 1990
August 1, 1991
October 1, 1985
November 1, 1990
June 1, 1988
March 11, 1987
November 14, 1990
October 9, 1991

1 Ms. Kenny retired as Alternate Chair on July 31, 1993. She retained her position as a Vice-Chair of the Tribunal and was re-appointed to that position effective July 29, 1993.

2 Ms. Onen, a Tribunal Vice-Chair, was appointed as Alternate chair on August 1, 1993.

Members Representative of Employers

Apsey, Robert	December 11, 1985
Barbeau, Pauline	January 15, 1990
Chapman, Stanley	July 16, 1990
Jago, W. Douglas	October 1, 1985
Meslin, Martin	August 1, 1988
Nipshagen, Gerry M.	October 1, 1988
Preston, Kenneth	October 1, 1985

Date of First Appointment

Part-time

Vice-Chairs

Faubert, Marsha	December 10, 1987
Flanagan, Bill	June 1, 1991
Harris, Dan	April 15, 1991
Hartman, Ruth	December 11, 1985
Marafioti, Victor	March 11, 1987
McGrath, Joy	December 10, 1987
Pfeiffer, Byron E.	March 15, 1990
Robeson, Virginia	March 15, 1990
Singh, Vara	June 1, 1991
Stewart, Susan L.	May 14, 1986
Sutherland, Sara	September 6, 1991

Members Representative of Workers

Beattie, David Bert	December 11, 1985
Drennan, George	December 11, 1985
Felice, Douglas H.	May 14, 1986
Fenton, Julie	December 19, 1991
Ferrari, Mary	May 14, 1986
Fox, Sam	June 20, 1991
Higson, Roy	December 11, 1985
Klym, Peter	May 14, 1986
Rao, Fortunato	February 11, 1988

Members Representative of Employers

Copeland, Susan	June 17, 1993
Howes, Gerald	August 1, 1989
Kowalishin, A. Teresa	May 14, 1986
Robb, C. James	June 2, 1993
Ronson, John	December 11, 1985
Seguin, Jacques A.	July 1, 1986
Shuel, Robert	August 1, 1989

VICE-CHAIRS AND MEMBERS ---- RE-APPOINTMENTS

In 1992-93, the following Vice-Chairs and Members were re-appointed to the Appeals Tribunal. All of the appointments were for three year terms.

	Date of Re-appointment
Full-time	
Vice-Chairs	
Bigras, Jean Guy	December 17, 1993
Kenny, Lila Maureen	July 29, 1993
McCombie, Nick	October 1, 1993
McIntosh-Janis, Faye	May 14, 1992
Sandomirsky, Janice R.	July 3, 1993
Members Representative of Workers	
Cook, Mary	November 1, 1993
Jackson, Faith	November 1, 1993
Robillard, Maurice	March 10, 1993
Shartal, Sarah	November 1, 1993
Members Representative of Employers	
Barbeau, Pauline	January 15, 1993
Chapman, Stanley	July 16, 1993
Jago, W. Douglas	October 1, 1993
Nipshagen, Gerry M.	June 15, 1992
Part-time	
Vice-Chairs	
Faubert, Marsha	December 10, 1993
Marafioti, Victor	March 10, 1993
McGrath, Joy	December 10, 1993
Robeson, Virginia	March 14, 1993
Stewart, Susan L.	May 14, 1992
Members Representative of Workers	
Felice, Douglas H.	May 14, 1992
Ferrari, Mary	May 14, 1992
Higson, Roy	December 11, 1993
Klym, Peter	May 14, 1992
Members Representative of Employers	
Howes, Gerald	August 1, 1992
Seguin, Jacques A.	July 1, 1992
Shuel, Robert	August 1, 1992

VICE-CHAIRS AND MEMBERS ---- EXPIRED APPOINTMENTS AND RESIGNATIONS

The following is a list of Order-in-Council appointments who resigned or whose appointments expired during 1992-93.

Fox, Sam, Member Representative of Workers' (part-time)

Kowalishin, A. Teresa, Member Representative of Employers (part-time)

Pfeiffer, Byron P., Vice-Chair (part-time)

Preston, Kenneth, Member Representative of Employers (full-time)

NEW APPOINTMENTS DURING 1992-93

Zeynep Onen

(Alternate Chair) August 1, 1993

The position of Alternate Chair involves both senior management and adjudicative functions. The Alternate Chair is effectively a partner with the Chair in the management of the Tribunal. She is also authorized to act in the Chair's place should he be absent from Ontario or otherwise unable to act. Ms. Onen was appointed as Alternate Chair effective August 1, 1993. Ms. Onen has been employed at the Tribunal since October 1985. She was first employed as a Tribunal counsel. From March 1986 to October 1988, she was senior legal counsel in the Tribunal Counsel Office. During this period, she also acted for a time as the Tribunal's General Counsel. She has been a full-time Vice-Chair since October 1, 1988.

Susan Copeland

(Part-time Member Representative of Employers) June 23, 1993

Ms. Copeland, who recently retired from Ontario Hydro, has been involved in the supervision of workers' compensation claims since 1980. She was the organizer of a Schedule 2 employers' group and is a former vice-chair of the Municipal Users' Group. She has been active in organizing and presenting workers' compensation training seminars and has direct advocacy experience at the Workers' Compensation Board and at the Tribunal.

Catherine Frazee

(Full-time Vice-Chair) November 1, 1992

Ms. Frazee is the former Chief Commissioner of the Ontario Human Rights Commission. She comes to the Tribunal with a background in law and writing. She is fluent in both English and French.

C. James (Jim) Robb

(Part-time Member Representative of Employers) June 23, 1993

Mr. Robb recently retired from Dofasco where he had been supervisor of workers' compensation since 1986. Until recently, he was chair of the Canadian Manufacturers' Association's Workers' Compensation Committee. He was also a member of the WCB Chairman's Task Force on Service Delivery and Vocational Rehabilitation, Hamilton Regional Advisory Group.

SENIOR STAFF

The following is a list of the senior staff who were employed at the Appeals Tribunal during the reporting period.

Beverley Pavuls	Chief Administration Officer
Linda Moskovits	Chief Information Officer
Eleanor Smith	Tribunal General Counsel
Peter Taylor	Chief Financial Officer
Carole Trethewey	Counsel to the Tribunal Chair

MEDICAL COUNSELLORS

The following is a list of the Tribunal's Medical Counsellors.

Dr. Douglas P. Bryce	Otolaryngology
Dr. Ross Fleming	Neurosurgery
Dr. Robert Harris	Orthopaedic Surgery
Dr. Frederick H. Lowy	Psychiatry
Dr. Robert L. MacMillan	Internal Medicine
Dr. John S. Speakman	Ophthalmology
Dr. Neil A. Watters	General Surgery

APPENDIX C

WORKERS' COMPENSATION APPEALS TRIBUNAL

REPORT AND FINANCIAL STATEMENTS December 31, 1991

Auditors' Report

To the Workers' Compensation Appeals Tribunal

We have audited the balance sheet of the Workers' Compensation Appeals Tribunal as at December 31, 1991 and the statements of expenditures and Workers' Compensation Board Funding for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Tribunal as at December 31, 1991 and the results of its operations and Workers' Compensation Board Funding for the year then ended in accordance with the accounting policies described in Note 2 of the financial statements.

Deloitte & Touche
Chartered Accountants
Toronto, Ontario
July 8, 1992

BALANCE SHEET December 31, 1991

ASSETS	1991	1990
Cash in bank	\$ 411,900	\$ 616,000
Receivable from Workers' Compensation Board	1,739,500	1,511,500
Salary and wages recoverable	35,800	23,600
Accounts receivable	<u>13,000</u>	<u>8,300</u>
	<u>\$ 2,200,200</u>	<u>\$ 2,159,400</u>
LIABILITIES		
Accounts payable and accrued liabilities	\$ 800,200	\$ 759,400
Operating advance from Workers' Compensation Board	<u>1,400,000</u>	<u>1,400,000</u>
	<u>\$ 2,200,200</u>	<u>\$ 2,159,400</u>

Approved on Behalf of the Workers' Compensation Appeals Tribunal
S.R. Ellis, Chairman

STATEMENT OF EXPENDITURES Year Ended December 31, 1991

	1991	1990
Salaries and wages	\$ 6,212,600	\$ 5,400,500
Employee benefits	915,100	760,600
Transportation and communication	466,600	423,600
Services	2,767,700	2,542,900
Supplies and equipment	<u>392,700</u>	<u>268,700</u>
Total operating expenditures	10,754,700	9,396,300
Capital expenditures	<u>7,400</u>	<u>53,200</u>
Total expenditures	<u>\$ 10,762,100</u>	<u>\$ 9,449,500</u>

STATEMENT OF WORKERS' COMPENSATION BOARD FUNDING Year Ended December 31, 1991

	1991	1990
Recoverable expenditures	\$ 10,762,100	\$ 9,449,500
Reimbursement from Workers' Compensation Board	<u>10,534,100</u>	<u>10,198,400</u>
Change in receivable from Workers' Compensation Board	228,000	(748,900)
Receivable from Workers' Compensation Board, beginning of year	<u>1,511,500</u>	<u>2,260,400</u>
Receivable from Workers' Compensation Board, end of year	<u>\$ 1,739,500</u>	<u>\$ 1,511,500</u>

NOTES TO THE FINANCIAL STATEMENTS December 31, 1991

1. General

The Tribunal was created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers from decisions, orders or rulings of the Workers' Compensation Board ("WCB"), and any matters or issues expressly conferred upon the Tribunal by the Act.

2. Significant Accounting Policies

The Tribunal's financial statements are prepared in accordance with generally accepted accounting principles except for capital expenditures which are charged to expense in the year of acquisition.

3. Commitments

The Tribunal has commitments under an operating lease requiring minimum annual lease payments as follows:

1992	\$ 780,960
1993	780,960
1994	780,960
1995	780,960
1996	<u>260,320</u>
	<u>\$ 3,384,160</u>

WORKERS' COMPENSATION APPEALS TRIBUNAL

REPORT AND FINANCIAL STATEMENTS December 31, 1992

Auditors' Report

To the Workers' Compensation Appeals Tribunal

We have audited the balance sheet of the Workers' Compensation Appeals Tribunal as at December 31, 1992 and the statements of expenditures and Workers' Compensation Board funding for the year then ended. These financial statements are the responsibility of the Tribunal's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Workers' Compensation Appeals Tribunal as at December 31, 1992 and the results of its operations and Workers' Compensation Board funding for the year then ended in accordance with the accounting policies described in Note 2 of the financial statements.

Deloitte & Touche
Chartered Accountants
Toronto, Ontario
December 30, 1993

BALANCE SHEET December 31, 1992

ASSETS	1992	1991
Cash	\$ 210,600	\$ 411,900
Receivable from Workers' Compensation Board	1,550,200	1,739,500
Salary and wages recoverable (Note 3)	13,600	35,800
Advances	<u>14,500</u>	<u>13,000</u>
	<u>\$ 1,788,900</u>	<u>\$ 2,200,200</u>
LIABILITIES		
Accounts payable and accrued liabilities	\$ 388,900	\$ 800,200
Operating advance from Workers' Compensation Board (Note 4)	<u>1,400,000</u>	<u>1,400,000</u>
	<u>\$ 1,788,900</u>	<u>\$ 2,200,200</u>

Approved on Behalf of the Workers' Compensation Appeals Tribunal
S.R. Ellis, Chairman

STATEMENT OF EXPENDITURES Year Ended December 31, 1992

	1992	1991
Salaries and wages	\$ 6,444,500	\$ 6,212,600
Employee benefits	\$ 1,080,200	915,100
Transportation and communication	479,800	466,600
Services	2,671,400	2,767,700
Supplies and equipment	<u>245,900</u>	<u>392,700</u>
Total operating expenditures	10,921,800	10,754,700
Capital expenditures	<u>12,100</u>	<u>7,400</u>
Total expenditures	<u>\$ 10,933,900</u>	<u>\$ 10,762,100</u>

STATEMENT OF WORKERS' COMPENSATION BOARD FUNDING Year Ended December 31, 1992

	1992	1991
Recoverable expenditures	\$ 10,933,900	\$ 10,762,100
Reimbursement from Workers' Compensation Board	<u>11,123,200</u>	<u>10,534,100</u>
Change in receivable from Workers' Compensation Board	(189,300)	228,000
Receivable from Workers' Compensation Board, beginning of year	<u>1,739,500</u>	<u>1,511,500</u>
Receivable from Workers' Compensation Board, end of year	<u>\$ 1,550,200</u>	<u>\$ 1,739,500</u>

NOTES TO THE FINANCIAL STATEMENTS December 31, 1992

1. General

The Workers' Compensation Appeals Tribunal ("Tribunal") was created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers of decisions, orders or rulings of the Workers' Compensation Board, and any matters or issues expressly conferred upon the Tribunal by the Act.

2. Significant Accounting Policies

The Tribunal's financial statements are prepared in accordance with generally accepted accounting principles except for capital expenditures which are charged to expense in the year of acquisition.

3. Salaries and Wages Recoverable

Certain employees are on secondment with the Ministry of Community and Social Services of the Government of Ontario and their remuneration is recoverable.

4. Operating Advance from Workers' Compensation Board

The operating advance is interest-free with no specific term of repayment.

5. Commitments

The Tribunal has commitments under an operating lease requiring minimum annual lease payments as follows:

1993	\$ 780,960
1994	780,960
1995	780,960
1996	260,320

5. Engagements

Le Tribunal a des engagements en vertu d'un contrat de location-exploitation dont les loyers minimaux annuels exigibles s'établissent comme suit :

1993	780 960 \$
1994	780 960
1995	780 960
1996	260 320

ÉTAT DU FINANCEMENT DE LA COMMISSION DES ACCIDENTS DU TRAVAIL de l'exercice terminé le 31 décembre 1992

1991	1992
10 762 100	10 933 900 \$
10 534 100	11 123 200
228 000	(189 300)
1 511 500	1 739 500
1 739 500	1 550 200 \$
1 739 500	

Dépenses récupérables

Remboursement de la Commission des accidents du travail

Variation dans la somme à recevoir de la Commission des accidents du travail

Somme à recevoir de la Commission des accidents du travail, au début de l'exercice

Somme à recevoir de la Commission des accidents du travail, à la fin de l'exercice

NOTES COMPLÉMENTAIRES de l'exercice terminé le 31 décembre 1992

1. Généralités

Le Tribunal d'appel des accidents du travail (le «Tribunal») a été créé par la loi de 1984 modifiant la Loi sur les accidents du travail, S.O., 1984, chapitre 58 — article 32, qui est entrée en vigueur le 1^{er} octobre 1985.

Le Tribunal a pour mandat d'entendre, d'évaluer et de régler d'une manière juste, impartiale et indépendante, les appels des travailleurs et employeurs des décisions ou ordonnances de la Commission des accidents du travail, et toute question ou affaire expressément soumise au Tribunal en vertu de la Loi.

2. Principales conventions comptables

Les états financiers du Tribunal sont dressés selon les principes comptables généralement reconnus, exception faite des dépenses en immobilisations qui sont portées dans les dépenses de l'exercice au cours duquel elles ont été effectuées.

3. Salaires et traitements à recouvrer

Certains employés font l'objet d'une affectation provisoire auprès du ministère des Services sociaux et communautaires du gouvernement de l'Ontario et leur rémunération peut être recouvrée.

4. Avance d'exploitation de la Commission des accidents du travail

L'avance d'exploitation consentie par la Commission ne porte pas intérêt et n'est assortie d'aucune modalité de remboursement.

BILAN au 31 décembre 1992

ACTIF			
Encaisse	210 600 \$	1992	1991
Somme à recevoir de la Commission des accidents du travail	1 550 200		
Salaires et traitements à recouvrer (note 3)	13 600		
Avances	14 500		
	<u>1 788 900 \$</u>		
			<u>2 200 200 \$</u>
PASSIF			
Créditeurs et charges à payer	388 900 \$		
Avance d'exploitation de la Commission des accidents du travail (note 4)	1 400 000		
	<u>1 788 900 \$</u>		
			<u>2 200 200 \$</u>
Approuvé au nom du Tribunal,			
S. R. Ellis, président			

ÉTAT DES DÉPENSES de l'exercice terminé le 31 décembre 1992

Salaires et traitements	6 444 500 \$	1992	1991
Avantages sociaux des employés	1 080 200		
Transport et communications	479 800		
Services	2 671 400		
Fournitures et matériel	<u>245 900</u>		
Total des dépenses d'exploitation	10 921 800		
Dépenses en immobilisations	<u>12 100</u>		
Total des dépenses	<u>10 933 900 \$</u>		
			<u>10 762 100 \$</u>
			<u>7 400</u>
			<u>10 754 700</u>
			<u>392 700</u>
			<u>2 767 700</u>
			<u>466 600</u>
			<u>915 100</u>
			<u>6 212 600 \$</u>

RAPPORT ET ETATS FINANCIERS 31 décembre 1992

Rapport des vérificateurs

Au Tribunal d'appel des accidents du travail

Nous avons vérifié le bilan du Tribunal d'appel des accidents du travail au 31 décembre 1992 et les états des dépenses et du financement de la Commission des accidents du travail de l'exercice terminée à cette date. La responsabilité de ces états financiers incombe à la direction du Tribunal. Notre responsabilité consiste à exprimer une opinion sur ces états financiers en nous fondant sur notre vérification.

Notre vérification a été effectuée conformément aux normes de vérification généralement reconnues. Ces normes exigent que la vérification soit planifiée et exécutée de manière à fournir un degré raisonnable de certitude quant à l'absence d'inexactitudes importantes dans les états financiers. La vérification comprend le contrôle par sondages des éléments probants à l'appui des montants et des autres éléments d'information fournis dans les états financiers. Elle comprend également l'évaluation des principes comptables suivis et des estimations importantes faites par la direction, ainsi qu'une appréciation de la présentation d'ensemble des états financiers.

À notre avis, ces états financiers présentent fidèlement, à tous égards importants, la situation financière du Tribunal d'appel des accidents du travail au 31 décembre 1992 ainsi que les résultats de son exploitation et le financement de la Commission des accidents du travail pour l'exercice terminé à cette date selon les conventions comptables décrites à la note 2 des états financiers.

Deloitte & Touche
Comptables agréés
Toronto (Ontario)
le 30 décembre 1993

ÉTAT DU FINANCEMENT DE LA COMMISSION DES ACCIDENTS DU TRAVAIL de l'exercice terminé le 31 décembre 1991

1991	1990
10 762 100 \$	9 449 500 \$
10 534 100	10 198 400
228 000	(748 900)
1 511 500	2 260 400
1 739 500 \$	1 511 500 \$

Dépenses récupérables

Remboursement de la CAT

Variation dans la somme à recevoir de la CAT

Somme à recevoir de la CAT

— au début de l'exercice

Somme à recevoir de la CAT

— à la fin de l'exercice

NOTES COMPLÉMENTAIRES 31 décembre 1991

1. Généralités

Le Tribunal a été créé par la loi de 1984 modifiant la Loi sur les accidents du travail, S.O., 1984, chapitre 58 — article 32, qui est entrée en vigueur le 1^{er} octobre 1985.

Le Tribunal a pour mandat d'entendre, d'évaluer et de régler d'une manière juste, impartiale et indépendante, les appels des travailleurs et employeurs des décisions ou ordonnances de la Commission des accidents du travail («CAT»), et toute question ou affaire expressément soumise au Tribunal en vertu de la Loi.

2. Principales conventions comptables

Les états financiers du Tribunal sont dressés selon les principes comptables généralement reconnus exception faite des dépenses en immobilisations qui sont portées dans les dépenses de l'exercice où elles ont été effectuées.

3. Engagements

Le Tribunal a des engagements en vertu d'un contrat de location-exploitation dont les loyers minimaux annuels exigibles s'établissent comme suit :

1992	780 960 \$
1993	780 960
1994	780 960
1995	780 960
1996	260 320
	<u>3 384 160 \$</u>

BILAN au 31 décembre 1991

ACTIF		
Encaisse	414 900 \$	1991
Somme à recevoir de la Commission des accidents du travail	1 739 500	1990
Salaires et traitements à recouvrer	35 800	
Débiteurs	13 000	
	<u>2 200 200 \$</u>	
	<u>2 159 400 \$</u>	
PASSIF		
Créditeurs et charges à payer	800 200 \$	1991
Avance d'exploitation de la Commission des accidents du travail	1 400 000	1990
	<u>2 200 200 \$</u>	
	<u>2 159 400 \$</u>	
Approuvé au nom du Tribunal, S. R. Ellis, président		

ÉTAT DES DÉPENSES de l'exercice terminé le 31 décembre 1991

Salaires et traitements	6 212 600 \$	1991
Avantages sociaux des employés	915 100	1990
Transport et communications	466 600	
Services	2 767 700	
Fournitures et matériel	392 700	
Total des dépenses d'exploitation	<u>10 754 700</u>	
Dépenses en immobilisations	<u>7 400</u>	
Total des dépenses	<u>10 762 100 \$</u>	
	<u>9 449 500 \$</u>	

ANNEXE C

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL

RAPPORT ET ÉTATS FINANCIERS 31 décembre 1991

Rapport des vérificateurs

Au Tribunal d'appel des accidents du travail

Nous avons vérifié le bilan du Tribunal d'appel des accidents du travail au 31 décembre 1991 et les états des dépenses et du financement des accidents du travail de l'exercice terminé à cette date. La responsabilité de ces états financiers incombe à la direction du Tribunal. Notre responsabilité consiste à exprimer une opinion sur ces états financiers en nous fondant sur notre vérification.

Notre vérification a été effectuée conformément aux normes de vérification généralement reconnues. Ces normes exigent que la vérification soit planifiée et exécutée de manière à fournir un degré raisonnable de certitude quant à l'absence d'inexactitudes importantes dans les états financiers. La vérification comprend le contrôle par sondages des éléments probants à l'appui des montants et des autres éléments d'information fournis dans les états financiers. Elle comprend également l'évaluation des principes comptables suivis et des estimations importantes faites par la direction, ainsi qu'une appréciation de la présentation d'ensemble des états financiers.

À notre avis, ces états financiers présentent fidèlement, à tous égards importants, la situation financière du Tribunal au 31 décembre 1991, ainsi que les résultats de son exploitation et le financement de la Commission des accidents du travail pour l'exercice terminé à cette date selon les conventions comptables décrites dans la note 2 des états financiers.

Deloitte & Touche
Comptables agréés
Toronto (Ontario)
le 8 juillet 1992

C. James (Jim) Robb

(Membre à temps partiel représentant les employés) 23 juin 1993

M. Robb a récemment quitté la société Dofasco où il était superviseur de l'indemnisation des travailleurs depuis 1986. Jusqu'à récemment, il était président du comité de l'indemnisation des travailleurs de l'Association canadienne des manufacturiers. Il était aussi membre du Groupe de travail du président de la Commission des accidents du travail sur la prestation des services et la réadaptation professionnelle, groupe consultatif régional d'Hamilton.

CADRES SUPÉRIEURS

Voici la liste des cadres supérieurs du Tribunal pendant la période visée par ce rapport.

Beverley Pavuls	Directrice de l'Administration
Linda Moskovits	Directrice du Service de l'Information
Eleanor Smith	Avocate générale du Tribunal
Peter Taylor	Directeur des Finances
Carole Trethewey	Conseillère juridique du président

CONSEILLERS MÉDICAUX

Voici la liste des conseillers médicaux du Tribunal.

D ^r Douglas P. Bryce	Otolaryngologie
D ^r Ross Fleming	Neurochirurgie
D ^r Robert Harris	Orthopédie
D ^r Frederick H. Lowy	Psychiatrie
D ^r Robert L. MacMillan	Médecine interne
D ^r John S. Speakman	Ophthalmologie
D ^r Neil A. Watters	Chirurgie générale

**VICE-PRÉSIDENTS ET MEMBRES ---
EXPIRATIONS DE MANDATS ET DÉMISSIONS**

Voici la liste des membres nommés par décret qui ont démissionné ou dont le mandat a expiré en 1992 ou 1993.

Fox, Sam, membre représentant les travailleurs (temps partiel)
Kowalishin, A. Teresa, membre représentant les employés (temps partiel)
Pfeiffer, Byron P., vice-président (temps partiel)
Preston, Kenneth, membre représentant les employés (plein temps)

NOMINATIONS EN 1992 ET 1993

Zeynep Onen

(Présidente suppléante) 1^{er} août 1993

Le poste de président suppléant comporte à la fois des fonctions de haute direction et des fonctions arbitrales. Le président suppléant agit un peu comme un associé du président en ce qui concerne la direction du Tribunal. Le président suppléant est aussi autorisé à assumer la présidence du Tribunal en cas d'empêchement du président ou de son absence de l'Ontario. Mme Onen a été nommée présidente suppléante du Tribunal le 1^{er} août 1993. Entrée au Tribunal en octobre 1985 à titre de conseillère juridique du Tribunal, elle a été conseillère juridique principale du Bureau des conseillers juridiques du Tribunal de mars 1986 à octobre 1988. Pendant cette période, elle a aussi occupé le poste d'avocate générale du Tribunal pendant un certain temps. Elle est vice-présidente à plein temps depuis le 1^{er} octobre 1988.

Susan Copeland

(Membre à temps partiel représentant les employés) 23 juin 1993

Mme Copeland, qui a récemment quitté la société Ontario Hydro, a travaillé dans le domaine de l'indemnisation des travailleurs depuis 1980. Elle a été à l'origine d'un groupe d'employeurs de l'annexe II et est une ancienne vice-présidente du WCB Municipal Users' Group. Elle a participé à l'organisation et à la présentation d'ateliers de formation et possède une expérience pratique à titre d'intervenante devant la Commission des accidents du travail et le Tribunal.

Catherine Frazee

(Vice-présidente à plein temps) 1^{er} novembre 1992

Mme Frazee est l'ancienne commissaire en chef de la Commission ontarienne des droits de la personne. Mme Frazee apporte au Tribunal son expérience dans le domaine du droit et de la rédaction. Elle parle couramment le français et l'anglais.

VICE-PRÉSIDENTS ET MEMBRES --- RENOUVELLEMENTS DE MANDATS

Au cours de 1992 et 1993, les mandats des vice-présidents et des membres du Tribunal d'appel énumérés ci-dessous ont été renouvelés. Tous les mandats renouvelés sont d'une durée de trois ans.

Date du renouvellement

Plein temps

Vice-présidents

Bigras, Jean Guy
Kennedy, Lila Maureen
McCombie, Nick
McIntosh-Janis, Faye
Sandomirsky, Janice R.

Membres représentant les travailleurs

Cook, Mary
Jackson, Faith
Robillard, Maurice
Shartel, Sarah
1^{er} novembre 1993
1^{er} novembre 1993
10 mars 1993
1^{er} novembre 1993

Membres représentant les employeurs

Barbeau, Pauline
Chapman, Stanley
Jago, W. Douglas
Nipshagen, Gerry M.
15 janvier 1993
16 juillet 1993
1^{er} octobre 1993
15 juin 1992

Temps partiel

Vice-présidents

Faubert, Marsha
Marafioti, Victor
McGrath, Joy
Robeson, Virginia
Stewart, Susan L.
10 décembre 1993
10 mars 1993
10 décembre 1993
14 mars 1993
14 mai 1992

Membres représentant les travailleurs

Felice, Douglas H.
Ferrari, Mary
Higson, Roy
Klym, Peter
14 mai 1992
14 mai 1992
11 décembre 1993
14 mai 1992

Membres représentant les employeurs

Howes, Gerald
Séguin, Jacques A.
Shuel, Robert
1^{er} août 1992
1^{er} juillet 1992
1^{er} août 1992

Membres représentant les employeurs

Apsey, Robert	11 décembre 1985
Barbeau, Pauline	15 janvier 1990
Chapman, Stanley	16 juillet 1990
Jago, W. Douglas	1 ^{er} octobre 1985
Meslin, Martin	1 ^{er} août 1988
Nipshagen, Gerry M.	1 ^{er} octobre 1988
Preston, Kenneth	1 ^{er} octobre 1985

Temps partiel Vice-présidents

Faubert, Marsha	10 décembre 1987
Flanagan, Bill	1 ^{er} juin 1991
Harris, Dan	15 avril 1991
Hartman, Ruth	11 décembre 1985
Maratoti, Victor	11 mars 1987
McGrath, Joy	10 décembre 1987
Pfeiffer, Byron E.	15 mars 1990
Robeson, Virginia	15 mars 1990
Singh, Vara	1 ^{er} juin 1991
Stewart, Susan L.	14 mai 1986
Sutherland, Sara	6 septembre 1991

Membres représentant les travailleurs

Beattie, David Bert	11 décembre 1985
Drennan, George	11 décembre 1985
Felice, Douglas H.	14 mai 1986
Fenton, Julie	19 décembre 1991
Ferrari, Mary	14 mai 1986
Fox, Sam	20 juin 1991
Higson, Roy	11 décembre 1985
Klym, Peter	14 mai 1986
Rao, Fortunato	11 février 1988

Membres représentant les employeurs

Copeland, Susan	17 juin 1993
Howes, Gerald	1 ^{er} août 1989
Kowalishin, A. Teresa	14 mai 1986
Robb, C. James	2 juin 1993
Ronson, John	11 décembre 1985
Séguin, Jacques A.	1 ^{er} juillet 1986
Shuel, Robert	1 ^{er} août 1989

Date de la première nomination

ANNEXE B

VICE-PRÉSIDENTS ET MEMBRES EN 1992 ET 1993

Date de la première nomination
comme membre à plein temps

Plein temps

Président

Ellis, S. Ronald

Présidente suppléante

Kenny, Lila Maureen

O'neil, Zeynep

Vice-présidents

Bigras, Jean Guy

Cook, Brian

Frazee, Catherine

Kenny, Lila Maureen

McCombie, Nick

McIntosh-Janis, Faye

Moore, John P.

Newman, Elaine

O'neil, Zeynep

Sandomirsky, Janice R.

Signoroni, Antonio

Strachan, Ian

Membres représentant les travailleurs

Cook, Mary

Crocker, Jim

Heard, Lorne (congé autorisé)

Jackson, Faith

Lebert, Raymond J.

Robillard, Maurice

Shattal, Sarah

Thompson, Patti

1^{er} novembre 1990
1^{er} août 1991
1^{er} octobre 1985
1^{er} novembre 1990
1^{er} juin 1988
11 mars 1987
14 novembre 1990
9 octobre 1991

14 mai 1986
6 septembre 1991
1^{er} novembre 1992
29 juillet 1993
22 janvier 1991
14 mai 1986
16 juillet 1986
1^{er} février 1991
1^{er} octobre 1988²
3 juillet 1990
1^{er} octobre 1985
1^{er} octobre 1985

1^{er} septembre 1991¹
1^{er} août 1993

1^{er} octobre 1985

1 M^{lle} Kenny a démissionné du poste de président suppléant le 31 juillet 1993. Elle est demeurée en poste à titre de vice-présidente du Tribunal et a été nommée à ce poste à nouveau le 29 juillet 1993.

2 M^{lle} O'neil, une vice-présidente du Tribunal, a été nommée au poste de président suppléant le 1^{er} août 1993.

- e) la décision donne lieu à une dissidence sur une question importante.
11. Le président ou le conseiller juridique du président peut préciser des questions qui, à son avis, devraient à un moment donné susciter l'examen des projets de décisions dans lesquels elles sont traitées en raison de l'intérêt particulier qu'elles présentent pour le Tribunal dans son ensemble.
12. Le conseiller juridique du Bureau qui effectue l'examen d'un projet ne le porte pas à la connaissance du président ou d'un autre membre du Tribunal sans y avoir été expressément enjoint par le membre qui le lui a soumis. Les conseillers juridiques du Bureau peuvent toutefois discuter entre eux des projets qui leur sont soumis.
13. Les membres d'un jury d'audience peuvent, en tout temps, consulter un autre membre du Tribunal, notamment le président, sur toute question de droit ou de politique de nature générale.
14. Les observations du conseiller juridique du Bureau à l'égard d'un projet sont transmises au membre du jury qui a demandé l'examen. Il incombe à ce dernier de signaler les questions importantes aux autres membres du jury d'audience.
15. Après avoir examiné un projet de décision, le conseiller juridique du Bureau peut parfois souligner l'opportunité d'examiner un deuxième projet de la même décision. Il incombe au membre du jury qui a demandé l'examen du premier projet de décider s'il convient de demander l'examen d'un deuxième projet.
16. Les conseillers juridiques du Bureau se tiennent à la disposition des membres du Tribunal pour discuter de questions de droit ou les aider avant ou après la rédaction d'un projet.
17. Le jury d'audience qui, à la suite de l'examen d'un projet par le Bureau (ou pour tout autre motif), estime devoir se pencher sur une question ou sur un précédent qui n'a pas été évoqué lors de l'audience doit examiner si la justice naturelle ne l'oblige pas à donner aux parties à l'audience l'occasion de lui présenter leurs observations ou de lui soumettre un supplément de preuve.
18. Les conseillers juridiques du Bureau rencontrent le président du Tribunal à intervalles réguliers pour étudier les décisions récemment communiquées et pour discuter, de façon générale, des questions et des préoccupations du moment.
19. Si, dans le cadre de l'exercice de leurs responsabilités, les conseillers juridiques du Bureau prennent connaissance d'un projet de décision touchant à une question ou à un problème de portée générale qui, à leur avis, est susceptible d'intéresser particulièrement le président du Tribunal, ils peuvent informer le membre qui leur a soumis le projet de l'intérêt probable du président. Ils ne doivent toutefois pas mentionner cette démarche au président, ni porter le projet à sa connaissance de quelque autre façon que ce soit.

- 2) que leurs décisions soient compatibles avec les décisions antérieures qui traitent de questions semblables (à moins qu'ils soient convaincus que les décisions antérieures portent sur des faits différents ou sont erronées).
6. Lorsque les membres d'un jury envisagent de demander au Bureau d'examiner un projet de décision, ils sont priés de tenir compte, plus particulièrement, des critères énoncés au point 10 des présentes lignes directrices. Cependant, tout membre d'un jury peut, en tout temps, demander l'examen d'un projet de décision. Lorsque l'examen porte sur une décision de la majorité ou de la minorité, il est utile que le conseiller juridique du Bureau puisse examiner les deux projets.
7. Comme le Tribunal est un organisme d'appel spécialisé qui doit trancher des questions difficiles de nature médicale ou juridique, il se soucie d'assurer la formation de ses nouveaux membres. Dans le cadre de cette formation, les personnes nommées à un poste de vice-président sont tenues de rédiger une décision facile et de la soumettre au Bureau pour examen. Une fois qu'on leur confie des audiences, les nouveaux vice-présidents sont priés de tenir compte des lignes directrices suivantes pour décider de l'opportunité de demander l'examen d'un projet de décision :
- a) Ceux qui ne possèdent pas d'expérience dans le domaine des accidents du travail sont invités à soumettre : leurs 20 premiers projets portant sur l'admissibilité; leurs cinq premiers projets portant sur le droit d'interjeter une action, sur l'accès et sur les examens médicaux; leurs deux premiers projets portant sur des demandes d'autorisation d'interjeter appel.
- b) Ceux qui possèdent de l'expérience dans le domaine des accidents du travail sont invités à soumettre : leurs 10 premiers projets portant sur l'admissibilité; leurs trois premiers projets portant sur le droit d'interjeter une action, sur l'accès et sur les examens médicaux; leur premier projet portant sur une demande d'autorisation d'interjeter appel.
8. L'examen des projets de décisions pendant cette période de formation vise à permettre aux nouveaux vice-présidents d'approfondir leurs connaissances dans le domaine des accidents du travail, de perfectionner leurs aptitudes à la rédaction et de mieux comprendre les critères de qualité du Tribunal.
9. L'examen des projets est effectué par le premier conseiller juridique du Bureau qui le peut, à moins que le membre du jury qui soumet le projet pour examen précise à quel conseiller du Bureau il voudrait confier l'examen. Quand une demande d'examen vise un deuxième projet d'une même décision, l'examen est confié au conseiller juridique du Bureau qui a examiné le premier projet, à moins que l'auteur de la demande désire qu'il en soit autrement.
10. L'examen des projets de décisions s'impose particulièrement dans les cas suivants :
- a) la décision porte sur une nouvelle question ou sur une question qui, pour tout autre motif, présente un intérêt particulier pour le Tribunal dans son ensemble;
- b) il est probable que, de par sa nature même, la décision fera l'objet de l'attention des médias, d'une demande de révision judiciaire, d'une plainte auprès de l'ombudsman ou d'une demande de réexamen;
- c) la décision se démarque des décisions antérieures du Tribunal par la manière dont elle traite une question;
- d) la décision a une incidence sur la politique ou les méthodes de la Commission;

ANNEXE A

LIGNES DIRECTRICES RELATIVES À L'EXAMEN DES PROJETS DE DECISIONS

1. Depuis sa création, le Tribunal a toujours été conscient de la nécessité de faire en sorte que ses modalités d'examen des projets de décisions respectent sans réserve l'indépendance et l'autonomie des jurys d'audience.
2. Comme le rappelle le plus récemment le rapport annuel de 1990 (à la page 6), l'examen des projets de décisions du Tribunal « a pour but d'assurer le maintien de la qualité, de la cohérence et de l'utilité de la jurisprudence du Tribunal ».
3. Dans ses arrêts *Consolidated-Bathurst et Tremblay*, la Cour suprême du Canada a confirmé qu'il est légitime et important pour les tribunaux de favoriser la qualité de leurs décisions ainsi qu'un degré acceptable de compatibilité et de cohérence dans leur jurisprudence.¹ La Cour a tout particulièrement approuvé les processus internes de consultation visant à influencer (mais non à contraindre) les décideurs sur des questions générales, juridiques ou de politique. Elle a aussi reconnu explicitement que l'importance de la cohérence des décisions de tribunaux sur le plan de la jurisprudence est un critère pertinent pour chaque décideur de tribunal.²
4. L'examen des projets de décisions est l'une des modalités par lesquelles le Tribunal favorise la qualité de ses décisions, et plus particulièrement leur compatibilité et leur cohérence. Les modalités de cet examen font partie des responsabilités du Bureau du conseiller juridique du président (ci-après le Bureau). Le Bureau comprend le conseiller juridique du président et des conseillers juridiques adjoints. L'examen vise à comparer les projets de décisions que soumettent les membres des jurys aux « Critères de qualité » du Tribunal. Ces critères, qui font partie de l'énoncé du mandat, des objectifs et de la prise d'engagements du Tribunal, ont été approuvés sous forme écrite en 1989. (Ces critères de qualité sont joints au Code d'éthique professionnelle des membres du Tribunal.)
5. Conformément au principe fondamental voulant que le pouvoir de décider appartienne au jury d'audience, c'est à ce dernier ou à l'un de ses membres qu'il incombe de demander l'examen d'un projet de décision. Lorsqu'ils étudient l'opportunité de soumettre un projet de décision pour examen, les membres d'un jury ne doivent pas oublier que c'est à eux, à titre de décideurs, qu'il revient de faire en sorte que leurs décisions soient raisonnablement conformes aux critères de qualité du Tribunal et, en particulier :
- 1) que leurs décisions cadrent avec les décisions antérieures du Tribunal;

1 *Consolidated-Bathurst Packaging Ltd. c. Syndicat international des travailleurs du bois d'Amérique, section locale 2-69* (1990), 1 R.C.S. 282, aux pages 324 à 325, 333 à 334 et 340, et *Tremblay c. Québec (Commission des affaires sociales)* (1992), 1 R.C.S. 952, aux pages 968 à 971 et 972 à 975.

2 *Consolidated Bathurst*, selon le juge Gauthier, à la page 333 « L'opinion de la majorité peut aussi amener un décideur à changer d'avis par souci de cohérence de la jurisprudence puisqu'il s'agit d'un critère légitime qui doit être pris en considération, même si le décideur n'est lié par aucune règle de stare decisis. »

Tableau 11 -- ETAT DES DÉPENSES ET ÉCARTS

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL				
ÉTAT DES DÉPENSES ET ÉCARTS DE 1993				
au 31 décembre 1993 (en milliers de dollars)				
	BUDGET	RÉEL	\$	% ÉCART
	1993	1993		
Salaire et traitements	6 566,0	6 461,0	105,0	1,60
Avantages sociaux	1 018,0	1 063,0	(45,0)	(4,42)
Transports et communications	506,0	354,0	152,0	30,04
Services	2 947,0	2 741,0	206,0	6,99
Fournitures et matériel	295,0	187,0	108,0	36,61
TOTAL (DÉPENSES DE FONCTIONNEMENT)	11 332,0	10 806,0	526,0	4,64
Dépenses en immobilisations	180,0	12,0	168,0	93,33
Engagement dans le cadre du Contrat social	0,0	245,8	(246,0)	0,00
TOTAL DES DÉPENSES	11 512,0	11 064,0	448,0	3,89

Tableau 10 -- ETAT DES DÉPENSES ET ÉCARTS

TRIBUNAL D'APPEL DES ACCIDENTS DU TRAVAIL				
ÉTAT DES DÉPENSES ET ÉCARTS DE 1992				
au 31 décembre 1992 (en milliers de dollars)				
	BUDGET	RÉEL	\$	% ÉCARTS
	1992	1992		
Salaire et traitements	6 437,0	6 445,0	(7,0)	(0,11)
Avantages sociaux	929,0	1 081,0	(151,0)	(16,25)
Transports et communications	483,0	480,0	3,0	0,62
Services	2 998,0	2 672,0	327,0	10,91
Fournitures et matériel	325,0	246,0	79,0	24,31
TOTAL DES DÉPENSES DE FONCTIONNEMENT	11 172,0	10 924,0	251,0	2,25
Dépenses en immobilisations	25,0	12,0	13,0	52,00
TOTAL DES DÉPENSES	11 197,0	10 936,0	264,0	2,36

Tableau 8 -- PROFIL DE LA REPRÉSENTATION AUX AUDIENCES

Profil de la représentation par région					
EMPLOYEUR	Est	Nord	Sud	Toronto	TOTAL
	(%)	(%)	(%)	(%)	(%)
Membre de l'entreprise	24	42	16	18	19
Expert-conseil	5	5	28	21	20
Avocat	48	31	21	36	35
Sans représentant	9	4	5	7	7
Bureau des conseillers du patronat	9	11	18	11	11
Autre	5	7	12	7	8
TOTAL	100	100	100	100	100
TRAVAILLEUR	0	1	3	8	7
Expert-conseil					
Avocat et aide juridique	22	7	13	14	13
Sans représentant	20	8	9	20	17
Bureau des conseillers des travailleurs	29	55	25	26	29
Autre	18	11	19	16	16
Syndicat	11	18	31	16	18
TOTAL	100	100	100	100	100

NOTA : Le profil de la représentation des parties pour l'ensemble des audiences ressemble beaucoup au profil de la représentation pour les audiences tenues à Toronto, car la plupart des audiences ont eu lieu dans cette ville. Dans l'est, les audiences ont eu lieu à Ottawa, dans le nord, à Sault Ste. Marie, à Sudbury, à Timmins et à Thunder Bay, et dans le sud, à London et à Windsor.

Tableau 9 -- DECISIONS RENDUES

APPELS		RÉEXAMENS	
Décisions provisoires	100	Décisions provisoires	10
Décisions définitives	904	Décisions définitives	60
Total partiel	1 004	Total partiel	70
123	720	64	58
843		6	
1992	1993	1 074	907
TOTAL		TOTAL	

CATÉGORIE	Règles en 1992	Règles (médiane)
Examen médical et accès	94	48
Droit d'intenter une action	236	293
Admissibilité	264	273
Demandes postérieures aux décisions	204	189
TOUS LES CAS	201	170

Tableau 6 -- ANALYSE DU TEMPS DE TRAITEMENT

CATÉGORIE	INSCRIPTION AU CALENDRIER DES AUDIENCES	AUDIENCES*	CAS ENTENDUS	DÉCISIONS ** RENDUES	CAS RÉGLÉS PAR DÉCISION **
1992					
Droit d'intenter une action	139	91	70	68	55
Examen médical	80	39	34	29	25
Accès	136	136	133	147	142
Demande d'autorisation d'interjeter appel	25	23	23	23	17
Admissibilité et autres	922	847	739	737	619
Réexamen	95	95	77	70	62
TOTAL	1 397	1 231	1 076	1 074	920
1993					
Droit d'intenter une action	136	85	72	63	63
Examen médical	49	19	19	21	17
Accès	110	93	91	83	87
Demande d'autorisation d'interjeter appel	21	21	21	21	23
Admissibilité et autres	1 164	921	837	656	596
Réexamen	100	100	80	64	54
TOTAL	1 580	1 239	1 120	907	839

* Les audiences comprennent les audiences fondées sur des plaidoiries orales, les audiences fondées sur des observations écrites et les affectations de jurys aux fins des demandes de réexamen.
** Les décisions sont des décisions définitives, des décisions provisoires et des décisions de réexamen.

Tableau 7 -- AUDIENCES ET DÉCISIONS

Tableau 4 -- ETAT D'AVANCEMENT DU TRAITEMENT DES CAS

CAS INACTIFS		CAS ACTIFS	
Réception (attente de renseignements sur le cas)	237	Affectation à un travailleur juridique, étape préalable à l'audience	37
Etape préalable à l'audience (attente de l'audience)	280	Rédaction de la description de cas	144
		Etape préalable à l'inscription au calendrier des audiences	172
		Inscription au calendrier des audiences	195
		Etape postérieure à l'audience	291
		Rédaction de la décision	252
		Fermeture du dossier	32
TOTAL AU 31 DÉCEMBRE 1993		1 123	
DEMANDES POSTÉRIEURES AUX DÉCISIONS			
Ombudsman	41		
Réexamen	60		
Révision judiciaire	5		
		106	
		1 746	

POURCENTAGE DE CAS PAR TEMPS DE TRAITEMENT

	En 6 mois				De 6 à 12 mois				De 12 à 18 mois				Plus de 18 mois			
	1991	1992	1993		1991	1992	1993		1991	1992	1993		1991	1992	1993	
Droit d'intenter une action	54	38	28		25	38	33		14	13	20		7	11	18	
Examen médical et accès	78	78	93		18	20	6		3	1	1		1	2	0	
Admissibilité *	26	31	34		33	33	31		19	15	17		22	21	19	
Demandes postérieures aux décisions	39	43	44		32	36	32		13	10	6		16	10	18	
TOTAL	39	45	52		26	30	23		13	11	11		22	14	13	

* La catégorie «Admissibilité» comprend les appels liés à l'admissibilité aux indemnités et aux pensions, les demandes d'autorisation d'interjeter appel, les appels relatifs au reniement, les appels relatifs aux cotisations des employeurs ainsi que les appels relatifs aux capitalisations de pensions.

Tableau 5 -- RÉPARTITION DU TEMPS DE TRAITEMENT

Figure 4 -- CAS RÉGLÉS PAR CATÉGORIE

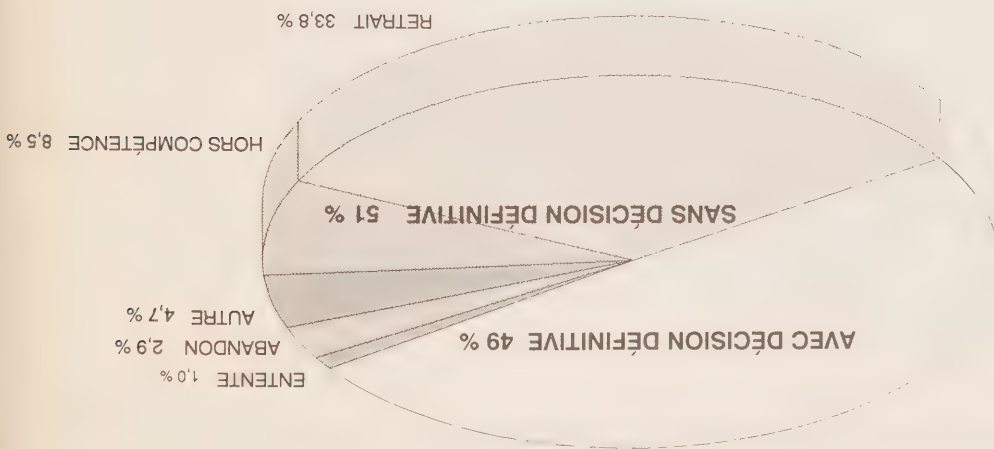


Figure 5 -- DEMANDES RÉÇUES ET CAS RÉGLÉS

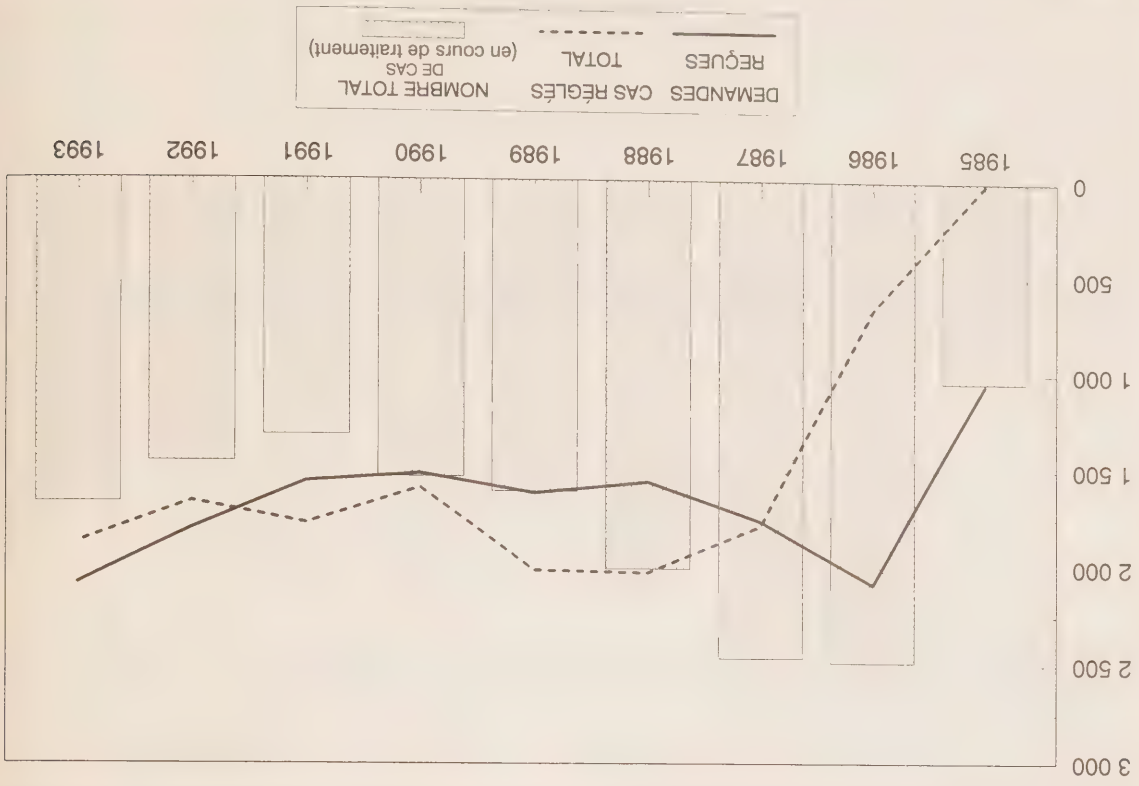
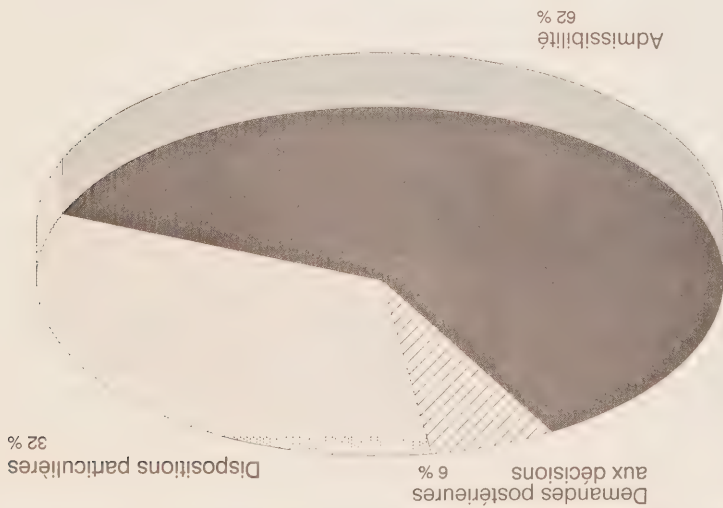


Tableau 3 -- CAS RÉGLÉS

Catégorie	1990	1991	1992	1993	TOTAL *** (cumulatif) Nombre (%)
Autorisation d'interjeter appel	56	55	29	31	711
Droit d'interjeter appel	118	108	7	101	799
Examen médical	46	66	4	54	514
Accès	309	313	389	521	2 487
Dispositions particulières	529	542	36	707	4 511
Pension	99	172	50	63	624
PNÉ/PÉF *	s/o	0	1	3	4
Capitalisation	29	10	10	26	154
Cotisations des employeurs	29	22	24	17	168
Admissibilité	684	792	729	801	6 214
Rengagement	0	4	31	32	67
Hors compétence	34	38	89	72	610
Réadaptation professionnelle **	0	0	5	25	30
Admissibilité	875	1 038	939	1 039	7 871
Révision judiciaire	3	8	4	15	40
Ombudsman	103	112	53	42	463
Réexamen	82	76	67	61	484
Eclaircissement	1	0	0	0	4
Demands postérieures aux décisions	189	196	124	118	991
TOTAL DES CAS RÉGLÉS	1 593	1 776	1 664	1 864	13 373

* Cette catégorie comprend les appels liés aux indemnités pour pertes non économiques et pour pertes économiques futures introduites par le projet de loi 162.
 ** Cette catégorie comprend les appels liés aux exigences plus élevées en matière de réadaptation professionnelle introduites par le projet de loi 162.
 *** Le TOTAL (cumulatif) comprend tous les cas, y compris ceux reçus avant le 1er janvier 1990.



La catégorie «Demandes postérieures aux décisions» comprend les demandes de réexamen ainsi que les demandes liées aux enquêtes de l'ombudsman et aux révisions judiciaires. La catégorie «Admissibilité» comprend les demandes liées à des questions connexes ainsi que les demandes ne relevant pas de la compétence du Tribunal.

Figure 3 -- DEMANDES REÇUES PAR CATÉGORIE

Tableau 2 -- DEMANDES REÇUES

Catégorie	1990	1991	1992	1993	TOTAL **** (cumulatif) Nombre (%)
Autorisation d'interférer appel	44	31	35	12	723
Droit d'intenter une action	121	127	124	113	918
Examen médical	52	65	76	49	531
Accès	288	318	370	24	2 569
Dispositions particulières	505	541	605	683	4 741
Pension	21	2	58	75	703
PNÉ/PÉF *	s/o	0	3	7	10
Capitalisation	16	6	26	30	179
Cotisations des employeurs	26	6	25	23	196
Admissibilité	746	788	816	854	7 198
Rengagement	1	0	39	46	117
Réadaptation professionnelle **	s/o	1	19	60	80
Hors compétence	31	2	101	59	610
Etape préliminaire (aucune catégorie) ***	s/o	s/o	s/o	191	191
Admissibilité	841	55	1 087	1 345	9 284
Révision judiciaire	10	4	7	9	45
Ombudsman	82	65	44	50	504
Réexamen	81	85	61	63	541
Éclaircissement	0	0	0	0	4
Demandes postérieures aux décisions	173	154	112	122	1 094
TOTAL DES DEMANDES REÇUES	1 519	1 560	1 804	2 150	15 119

* Cette catégorie comprend les appels liés aux indemnités pour pertes non économiques et pour pertes économiques futures introduites par le projet de loi 162.
 ** Cette catégorie comprend les appels liés aux exigences plus élevées en matière de réadaptation professionnelle introduites par le projet de loi 162.
 *** Cette catégorie comprend les demandes qui n'ont pas encore été classées dans une catégorie d'appel. Le TOTAL (cumulatif) comprend toutes les demandes, y compris celles reçues avant le 1er janvier 1990.

plus d'une décision (car il a parfois été nécessaire de régler des questions préliminaires) de sorte que le nombre total de décisions rendues a été de 907 en 1993 (ce qui représente aussi une diminution par rapport à 1992 où 1 074 décisions ont été rendues). La ventilation de ces décisions, selon les catégories d'appel se trouve au tableau 7, p. 46, et selon la catégorie de décisions, au tableau 9, p. 47. En 1993, la plupart des décisions (soit 778) ont été des décisions définitives (720 décisions liées à un appel et 58 liées à un réexamen). Cependant, les jurys ont aussi rendu 129 décisions provisoires (123 décisions portant sur des questions liées à un appel et six décisions portant sur des questions liées à un réexamen). On constate qu'il y a eu davantage de décisions provisoires en 1993 qu'en 1992.

QUESTIONS FINANCIÈRES

Les états des dépenses et les écarts pour les exercices clos le 31 décembre 1992 et le 31 décembre 1993 sont inclus dans ce rapport (tableaux 10 et 11, p. 48).

Le cabinet d'experts-comptables Deloitte et Touche a effectué la vérification des états financiers du Tribunal pour les exercices clos le 31 décembre 1991 et le 31 décembre 1992. Les rapports des vérificateurs se trouvent à l'annexe C. Au moment d'aller sous presse, le Tribunal n'avait pas encore reçu le rapport de vérification des états financiers pour l'exercice clos le 31 décembre 1993.

Le tableau 5 fournit aussi la proportion de cas réglés au cours de ces intervalles en 1991 et 1992. On constate ainsi que les données de 1993 se comparent très favorablement à celles des années antérieures. Cette situation s'explique en partie par le fait qu'il y a eu un plus grand nombre de cas réglés sans décision définitive en 1993, en particulier pour les cas liés à l'accès aux dossiers. En examinant attentivement les médianes figurant au tableau 6, p. 46, on note que le temps de traitement a quelque peu augmenté pour les autres catégories de cas (c'est-à-dire pour les cas susceptibles de nécessiter une décision définitive).

Audiences et décisions

Audiences

En 1993, 1 120 cas ont fait l'objet d'une audience ou ont été confiés à des jurys aux fins de délibération. Certains de ces cas ayant fait l'objet de plus d'une audience ou d'une séance de délibération, le Tribunal a tenu en tout 1 239 audiences et fixé 1 580 dates d'audience (il arrive qu'il faille repousser une audience en raison de maladie ou de contretemps — se reporter au tableau 7, p. 46).

Les audiences se sont réparties ainsi : 82 pour 100 ont consisté en auditions fondées sur des plaidoiries orales; 10 pour 100 ont consisté en auditions fondées sur des observations écrites ou en réunions de consultation; 8 pour 100 ont consisté en séances de délibération de jurys comme suite à des demandes de réexamen de décisions antérieures du Tribunal.

Les audiences officielles du Tribunal réunissent un jury de trois membres (un vice-président, un membre représentant les employeurs et un membre représentant les travailleurs) ainsi que les parties, habituellement accompagnées de leurs représentants.

Représentation lors des audiences

Les employeurs n'ont pas participé à environ 7 pour 100 des audiences tenues en 1992 et 1993. Lorsqu'ils ont participé aux audiences, ils se sont fait représenter de la façon suivante : par un avocat, à 35 pour 100 des audiences, par un membre de leur entreprise, à 19 pour 100, par le Bureau des conseillers du patronat, à 11 pour 100, et par d'autres personnes, à 8 pour 100.

Les travailleurs, quant à eux, se sont fait représenter le plus souvent par le Bureau des conseillers des travailleurs (29 pour 100 des audiences). Le reste du temps, ils se sont fait représenter de la façon suivante : par un syndicat, à 18 pour 100 des audiences, par un avocat ou l'aide juridique, à 13 pour 100, par un expert-conseil, à 7 pour 100, par d'autres personnes, à 16 pour 100. Enfin, les travailleurs n'avaient pas de représentants à 17 pour 100 des audiences.

En examinant les données selon les régions (tableau 8, p. 47), on peut observer des fluctuations intéressantes. Ainsi, dans la région du nord, les travailleurs se sont fait représenter par le Bureau des conseillers des travailleurs à 55 pour 100 des audiences; comparativement, cette proportion n'a été que de 25 pour 100 dans la région du sud. Des syndicats ont représenté les travailleurs à 31 pour 100 des audiences dans la région du sud, et à seulement 11 pour 100 des audiences dans la région de l'est. Quant aux employeurs, on observe qu'ils se sont fait représenter très souvent par un membre de leur personnel dans la région du nord.

Décisions

En 1993, 839 cas ont été réglés par une décision. Ce nombre représente une diminution par rapport à 1992 (où 920 cas ont été réglés par une décision). Certains de ces cas ont fait l'objet de

règles, les cas liés à des dispositions particulières de la Loi, 38 pour 100, et les cas liés à des demandes postérieures aux décisions, 6 pour 100.

Une décision définitive a été rendue dans environ la moitié des cas réglés en 1992 et 1993 (figure 4, p. 44). Des cas réglés sans décision définitive, la plupart (soit 33,8 pour 100) ont fait l'objet d'un retrait. Pour les autres, le jury a déterminé que le Tribunal n'était pas compétent (8,5 pour 100 des cas réglés), l'appel a été abandonné (2,9 pour 100 des cas réglés) ou une entente a été conclue (1 pour 100 des cas réglés).

La façon dont les cas ont été réglés a varié selon la catégorie de cas. Ainsi, pour la catégorie principale (c'est-à-dire pour les appels liés à l'admissibilité), une décision définitive a été rendue dans 59 pour 100 des cas. (Les autres cas ont fait l'objet d'un retrait [20 pour 100], ont été jugés hors compétence [15 pour 100], ou ont été abandonnés ou réglés d'une autre manière [6 pour 100]).

Nombre de cas en cours de traitement

La tendance à la hausse du nombre de demandes reçues par le Tribunal a commencé en 1991. Cette année-là, l'augmentation observée avait été relativement faible et le Tribunal avait pu régler 216 cas de plus qu'il en avait reçu. En 1992, le nombre de demandes reçues s'est accru de façon plus marquée et la production du Tribunal (c'est-à-dire le nombre de cas réglés) n'a pu suivre. En conséquence, le nombre de cas en cours de traitement a augmenté de 140. En 1993, le nombre de demandes reçues a connu une augmentation sans précédent et, même si le nombre de cas réglés a presque atteint un sommet, le nombre de cas en cours de traitement a tout de même augmenté de 286 cas. Ainsi, au 31 décembre 1993, le nombre total de cas non réglés était de 1 746 (se reporter à la figure 5, p. 44).

Le nombre de cas en cours de traitement se divise en trois catégories : les cas actifs, les cas inactifs et les cas parvenus à l'étape postérieure à l'audience. Des cas inactifs, 237 en étaient à l'étape préliminaire de la réception (on attendait que les demandes soient remplies) et 280 en étaient à la période d'attente précédant la tenue de l'audience (la date d'audience avait été fixée, mais était à venir). Les 1 123 cas actifs se répartissaient de la façon suivante : 37 n'avaient pas encore été assignés à un travailleur juridique aux fins du rassemblement des documents et de la rédaction de la description de cas; 144 en étaient à l'étape de la rédaction de la description de cas; 172 en étaient aux divers stades de l'étape préalable à l'audience; 195 en étaient à l'étape de l'inscription au calendrier des audiences; 575 en étaient à l'étape postérieure à l'audience, dont 291 affectées officiellement à un travailleur juridique chargé des travaux postérieurs à l'audience (en général, il s'agissait de cas ajournés, le jury ayant demandé des éléments de preuve médicale supplémentaires); 252 cas étaient parvenus à l'étape de la rédaction des décisions; 32 cas étaient réglés, mais devaient être définitivement clos. Les 106 cas restants étaient liés à des demandes postérieures à l'audience, soit en vue du réexamen d'une décision antérieure (60 cas), d'une enquête de l'ombudsman (41 cas) ou d'une révision judiciaire (5 cas) (tableau 4, p. 45).

Temps de traitement

En 1993, le temps de traitement médian nécessaire pour régler un cas a été d'environ 5,6 mois (soit 170 jours civils). Cinquante-deux pour cent des cas réglés l'ont été en six mois et 23 pour 100 ont exigé entre six et douze mois. Ainsi, les trois quarts des cas ont été réglés en un an ou moins. Il a fallu entre 12 et 18 mois pour régler 11 pour 100 des cas, et plus de 18 mois pour les 13 pour 100 restants (tableau 5, p. 45).

Par ailleurs, pour faciliter à une vice-présidente confinée à une chaise roulante et n'ayant qu'un usage très limité des bras et des jambes la tâche de rédiger des décisions, on a conçu un système spécial de liaison avec l'ordinateur central. Pour ce faire, on a installé un micro-ordinateur possédant une commande vocale adaptée à la voix de la vice-présidente. Le micro-ordinateur exécute les commandes ordinaires que la vice-présidente lui dicte à haute voix par l'intermédiaire d'un microphone spécial.

SOMMAIRE DES STATISTIQUES

Le présent rapport statistique renferme un sommaire détaillé de la production récente du Tribunal ainsi que des variations dans le nombre total de cas en cours de traitement. La première partie présente les données sur le nombre et le type de demandes reçues par année. La deuxième partie porte sur le nombre et le type de cas réglés. La troisième partie fournit un exposé détaillé du nombre actuel de cas à traiter (c'est-à-dire la différence entre le nombre de demandes reçues et le nombre de cas réglés depuis la création du Tribunal). Dans la quatrième partie, on examine le temps moyen nécessaire pour traiter un cas. Enfin, les deux mesures de production clés que sont les audiences et les décisions sont examinées en détail. On fournit aussi le profil de la représentation aux audiences pour les travailleurs et les employeurs selon les régions ainsi que le nombre de décisions et d'audiences.

Nombre de demandes reçues

En 1993, le nombre de demandes reçues a augmenté considérablement par rapport aux trois années précédentes (tableau 2 et figure 3, p. 41 et 42). En effet, ce nombre a atteint 2 150, soit une augmentation de 42 pour 100 par rapport à 1990, de 38 pour 100 par rapport à 1991 et de 19 pour 100 par rapport à 1992.

Si l'on examine les catégories de cas séparément, on constate que l'augmentation du nombre total de demandes reçues est due à deux facteurs : l'augmentation des demandes liées à l'admissibilité (pension, capitalisation, renforcement, réadaptation professionnelle, PNE, PFR et admissibilité générale) ainsi que des appels interjetés aux termes de l'article 71 de la Loi sur les accidents du travail (accès aux dossiers). En dépit d'une augmentation générale, le Tribunal a enregistré une diminution du nombre de demandes dans certaines catégories, notamment celle des demandes d'autorisation d'interjeter appel (présentées aux termes de l'article 94 de la Loi) et celle des demandes liées à un examen médical (présentées aux termes de l'article 23 de la Loi). En outre, il y a eu une baisse graduelle du nombre de demandes postérieures aux décisions (c'est-à-dire des demandes liées à des enquêtes de l'ombudsman ainsi que des demandes de révision judiciaire et de réexamen de décisions du Tribunal).

Cas réglés

En 1993, le Tribunal a réglé 1 864 cas (tableau 3, p. 43). Ce nombre représente une augmentation de 17 pour 100 par rapport au nombre de cas réglés en 1990. (Par rapport à 1991, l'augmentation est de 5 pour 100, et par rapport à 1992, de 12 pour 100.)

En 1993, les cas liés à l'admissibilité (c'est-à-dire les cas portant notamment sur l'admissibilité à des indemnités, les cotisations des employeurs, l'obligation de renvoyer et la réadaptation professionnelle ainsi que les cas jugés hors compétence) ont représenté 56 pour 100 des cas

Enfin, le Service a engagé une spécialiste des micro-ordinateurs en 1993 afin de fournir des services de soutien au nombre croissant d'employés du Tribunal qui utilisent un ordinateur personnel.

Directives sur la sécurité informatique

On a élaboré et diffusé au personnel un document décrivant les questions de sécurité liées à l'utilisation des ordinateurs pour créer, traiter, enregistrer et diffuser l'information. Les directives sur la sécurité informatique (*Information Technology Security Guidelines*) informent le personnel sur la façon d'éviter la destruction ou la divulgation accidentelle des documents et de données stockés dans leur ordinateur. Les directives reflètent les préoccupations soulevées dans la *Loi sur l'accès à l'information et la protection de la vie privée* et dans la directive du Conseil de gestion du gouvernement sur la sécurité informatique (à savoir le caractère confidentiel et l'intégrité des données ainsi que l'accessibilité des renseignements recueillis, stockés et consultés à l'aide d'ordinateurs). Etant donné l'utilisation de plus en plus grande de la technologie informatique au Tribunal, on a donné à ce projet une importance et une priorité particulières en 1992. Les directives ont été diffusées au cours de séances d'information auxquelles tous les employés et tous les membres nommés par décret ont dû participer.

Service de dépannage

Etant donné la plus grande utilisation de logiciels informatiques, on a établi un service de dépannage dont le préposé est un employé du Service de l'informatique. Grâce à ce service, on espère répondre plus rapidement aux problèmes informatiques courants auxquels fait face le personnel du Tribunal.

Rendement du mini-ordinateur

L'augmentation des nouvelles applications installées sur le réseau local utilisant le serveur VAX a provoqué une forte baisse du rendement des autres applications utilisant le VAX. On a découvert que le problème se produisait lorsqu'on exécutait les deux principales applications simultanément sur le même processeur.

Les discussions menées avec le fournisseur de matériel et de logiciel du Tribunal (la société Digital) continuent à ce sujet, mais en attendant on a installé un serveur piloté par un micro-ordinateur spécialisé et on a commencé les essais pour voir s'il s'agit là de la bonne solution.

Matériel spécial pour des membres handicapés

Afin de faciliter l'accès au système informatique par un membre du Tribunal atteint de cécité, on a acheté et mis en place un sous-système comprenant un micro-ordinateur doté d'un synthétiseur de parole qui permet de lire verbalement les renseignements affichés à l'écran. En outre, un lecteur optique a été installé afin que les renseignements offerts sur papier seulement puissent être transformés en images et lus à haute voix par le système pour le bénéfice de ce membre. Enfin, on a installé une imprimante en Braille de façon à pouvoir imprimer les documents dont ce membre a besoin pendant les audiences ou pour son travail quotidien.

Dès que toutes les sections du Tribunal eurent commencé à utiliser le système automatisé de suivi des cas, on a organisé des groupes de discussion afin de permettre aux utilisateurs de faire connaître leurs besoins éventuels et d'évaluer le système comme outil permettant d'augmenter la productivité. Les réunions ont commencé en novembre 1992 et ont servi à répondre aux quatre questions de base suivantes : 1) De quelle façon les divers services utilisent-ils le système? 2) Quelles sont les raisons pour lesquelles on utilise le système? 3) Qu'est-ce qui empêche l'utilisation du système? 4) Quelles améliorations pourrait-on apporter au système?

Selon les utilisateurs, l'un des principaux défauts du système était sa lenteur. On a déterminé que le problème était dû à la grande taille de la base de données et on a entrepris un projet en vue de permettre l'archivage des dossiers.

La base de données principale à laquelle les utilisateurs ont maintenant accès comprend les dossiers en cours de traitement. Les dossiers fermés sont archivés dans deux bases de données distinctes. L'une comprend l'historique des dossiers récemment fermés. Elle est installée sur l'ordinateur central du Tribunal et peut être consultée sur écran. En outre, au moment de créer des rapports, l'utilisateur peut intégrer les données qu'elle contient aux renseignements sur les dossiers en cours de traitement. L'autre base de données comprend les dossiers fermés depuis plus de deux ans. Cette base de données est hors ligne et, lorsqu'on veut consulter un dossier, on se sert d'un programme automatisé spécial exécuté pendant la nuit.

Étant donné que les dossiers en cours de traitement sont ceux utilisés le plus fréquemment et qu'ils représentent une partie relativement faible de l'ensemble des données, on a pu obtenir un rendement satisfaisant du système vers la fin de 1992. Par ailleurs, on a apporté certaines autres améliorations au moment de la création des fichiers d'archivage. On a augmenté la puissance du logiciel de la base de données, rationaliser la procédure d'entrée en communication et augmenter le nombre d'heures pendant lesquelles le système peut être utilisé.

Autres applications exploitées sur les ordinateurs personnels

On a installé un logiciel de comptabilité exploité sur ordinateur personnel au Service des finances du Tribunal pour remplacer le système de comptabilité entièrement manuel qui y était utilisé. Grâce à ce logiciel, le personnel de ce service peut produire plus rapidement et facilement les états financiers et les rapports financiers quotidiens, répondre plus rapidement aux questions de nature financière et obtenir une analyse financière détaillée sans avoir à consulter des dossiers imprimés encombrants.

On a installé sur le système informatique central une version réseau à utilisateurs multiples du logiciel *Cardbox-Plus* utilisé pour les bases de données internes du Tribunal. Grâce à cette version, il n'est plus nécessaire d'effectuer manuellement le transfert des données entre les ordinateurs personnels, tâche qui prend du temps, et il est plus facile d'effectuer la mise à jour et la sauvegarde courante de l'information. À l'heure actuelle, seul le personnel de la Section des publications et de la bibliothèque a accès à cette version du logiciel.

Le Service de l'informatique a apporté son appui à la Section des publications pour l'élaboration d'une copie de consultation de la base de données interne comprenant les sommaires des décisions. Le nouveau service est appelé *DDS* sur disquettes et utilise une version de consultation du logiciel *Cardbox-Plus*. Depuis le lancement du service en 1993, la liste des abonnés ne cesse de s'accroître.

Le Tribunal a branché son système informatique au système de paie CORPAY du gouvernement de l'Ontario. En outre, l'utilisation du logiciel *HR Timesaver* devrait commencer en 1994.

Directives de procédure

On a aussi révisé les directives de procédure du Tribunal afin de tenir compte de la nouvelle numérotation des dispositions de la Loi découlant de l'adoption des L.R.O. de 1990. Ainsi, on a renommé les directives de procédure dont le titre faisait référence à une disposition de la Loi.

Dépliant

Le dépliant intitulé *Le Tribunal d'appel des accidents du travail* a été publié pour la première fois en 1992. Ce dépliant remplace avantageusement la brochure intitulée *Guide pratique du Tribunal d'appel des accidents du travail*, laquelle est plus coûteuse et comprend des renseignements plus détaillés que ceux nécessaires au lecteur désirant une introduction générale au Tribunal.

Programme de bibliothèques de dépôt

On a mis le *W.C.A.T. Reporter* et les reliures du service de fiches analytiques gratuitement à la disposition de toutes les bibliothèques de dépôt universel inscrites au programme de bibliothèques de dépôt du gouvernement de l'Ontario. Étant donné que ces bibliothèques se trouvent un peu partout en Ontario, les chercheurs qui ne peuvent utiliser la bibliothèque du Tribunal ont maintenant accès plus facilement aux décisions du Tribunal.

Service de photocopie

Il est possible d'obtenir des photocopies des décisions du Tribunal par l'entremise du service de photocopie. En plus du service normal, on offre maintenant un service express dont le coût est plus élevé.

Élimination de Compensation Appeals Forum

On a mis fin à la publication du *Compensation Appeals Forum* en raison du peu d'intérêt manifesté par les intervenants pour présenter des articles originaux.

SERVICE DE L'INFORMATIQUE

Nouveau système informatique

Pendant le premier semestre de 1992, on a procédé à l'essai et à l'évaluation du nouveau système informatique du Tribunal et on l'a accepté. Ce projet avait été mis en branle après que le Conseil de gestion eu approuvé une analyse de rentabilité préparée par le Tribunal en 1991. L'analyse prévoyait le remplacement du système informatique vieillissant du Tribunal afin de régler un sérieux problème de surcharge et d'avoir les ressources informatiques suffisantes pour l'amélioration ultérieure des programmes.

Système automatisé de suivi des cas

En 1991, on a mis au point un système automatisé de suivi des cas utilisant le logiciel *ABASE* ainsi que le mini-ordinateur du Tribunal comme serveur du réseau d'ordinateurs personnels. Au début de 1992, le nouveau système a été présenté à l'ensemble du Tribunal grâce à des séances de formation données par le personnel du Service de recherche et d'analyse statistique. Le succès de la mise en place de cette nouvelle application destinée aux utilisateurs finals a permis d'accélérer et de faciliter la diffusion des données statistiques sur les cas et sur le volume de travail.

Projet d'amélioration des services de recherche

Les services de recherche sur papier et sur support électronique utilisent les mots-clés comme point d'accès principal aux décisions du Tribunal. En mars 1988, on a introduit un ensemble amélioré de mots-clés pour la classification des questions soulevées dans les décisions du Tribunal. Comme les mots-clés utilisés pour les décisions d'avant 1988 (lesquelles sont au nombre d'environ 2 000) étaient toujours ceux de l'ensemble de mots-clés original, les utilisateurs devaient effectuer leurs recherches dans les décisions du Tribunal en utilisant les deux ensembles de mots-clés.

On a terminé un projet visant à classer toutes les décisions en fonction des mots-clés introduits en 1988. Ainsi, il n'y a plus qu'un seul ensemble de mots-clés, ce qui permettra de simplifier énormément les recherches. En outre, certaines anciennes décisions avaient été classées en fonction des mots-clés, sans qu'un sommaire n'ait été rédigé. On a remédié à cette lacune, et toutes les décisions du Tribunal existent maintenant aussi sous forme de sommaire.

Ces améliorations ont déjà été apportées aux bases de données (DDS sur disquettes et WCAT *Online*). Elles seront intégrées au service de fiches analytiques (*Decision Digest Service*) au cours de la prochaine année.

W.C.A.T. Reporter

Le recueil d'arrêts *W.C.A.T. Reporter* comprend le texte intégral ainsi que le sommaire de décisions sélectionnées du Tribunal portant sur un large éventail de questions liées aux accidents du travail. Jusqu'à maintenant, le Tribunal publiait ce recueil d'arrêts conjointement avec la firme Carswell. À compter de 1994, le Tribunal verra seul à la publication du *W.C.A.T. Reporter*. La prise en charge de ce travail par la Section des publications permettra au Tribunal de réaliser des économies considérables.

Service de fiches analytiques (DDS)

Il a fallu apporter plusieurs modifications aux volumes du DDS à la suite de la nouvelle numérotation des dispositions de la *Loi sur les accidents du travail* découlant de l'introduction des *Lois refondues de l'Ontario de 1990*.

1. On a révisé tous les mots-clés qui faisaient référence au numéro d'une disposition de la Loi de façon à désigner la question pertinente par un sujet plutôt que par le numéro de la disposition. Par exemple, le mot-clé «requête en vertu de l'article 15» a été remplacé par le mot-clé «droit d'initier une action».

2. Les titres des dispositions de la Loi qui figurent dans l'index par dispositions refondu (*Annotated Statute [1985 - 26 avril 1991]*) sont toujours fondés sur la numérotation de la Loi telle qu'elle figure dans les L.R.O. de 1980. Par contre, les titres des dispositions de la Loi qui figurent dans l'index par dispositions (*Annotated Statute*) de l'index cumulatif (*Cumulative Index*) utilisent la numérotation de la Loi telle qu'elle figure dans les L.R.O. de 1990.

3. L'index de l'article 15 (*Section 15 Index*) s'appelle dorénavant index de l'article 17 (*Section 17 Index*) afin de tenir compte de la nouvelle numérotation de la Loi.

Sélection des livres

Les livres et les autres documents sont maintenant sélectionnés par un comité en consultation avec les bibliothécaires qui fournissent les services de référence.

Catalogue en ligne

Le personnel de la bibliothèque a utilisé les fiches informatiques du serveur bibliographique externe *Ulas* pour la collection de livres de la bibliothèque. Pour ce faire, le personnel a téléchargé dans un système interne de la bibliothèque, *Cardbox-Plus*, les fiches se trouvant dans la base de données *Ulas*. Ainsi, il est maintenant possible d'effectuer des recherches dans la collection de livres en consultant le fichier « Livres » de la base de données *Cardbox-Plus* à la bibliothèque. Grâce à ce système, on a pu réaliser des économies, rationaliser les méthodes de catalogage et offrir la souplesse et le caractère d'actualité des catalogues publics en ligne.

Meilleur accès aux bases de données

La bibliothèque tient à jour plusieurs bases de données du Tribunal — par exemple, sommaires des décisions du Tribunal et index de la documentation éphémère de la bibliothèque — et en assure l'accès au personnel du Tribunal ainsi qu'au public.

On a rédigé une série de guides destinés à fournir aux utilisateurs du logiciel *Cardbox-Plus* des instructions détaillées sur la façon d'effectuer des recherches dans chacune des bases de données internes de la bibliothèque. En outre, on offre aux utilisateurs un guide de portée plus générale ainsi qu'un guide conçu tout spécialement pour les utilisateurs du service DDS sur disquettes. (Lire la description du nouveau service DDS sur disquettes dans la partie consacrée à la Section des publications).

Enfin, on a notamment pris les mesures suivantes pour faciliter l'utilisation des bases de données de la bibliothèque : simplification des images affichées, ajout d'une introduction sur écran expliquant le contenu de chacune des bases de données et mise en place de commandes permettant de passer d'une base de données à une autre en appuyant simplement sur une touche du clavier.

Section des publications

DDS sur disquettes

Depuis plusieurs années, le public peut effectuer des recherches dans une base de données tenue par la bibliothèque contenant les sommaires des décisions du Tribunal. Afin de permettre aux abonnés d'effectuer de telles recherches dans leurs propres locaux, on a introduit le service de base de données DDS sur disquettes. Ce service permet à l'utilisateur d'effectuer ses recherches à partir des mots-clés, du numéro des décisions, de la date de publication, des noms des membres des jurys ainsi que des dispositions examinées. Étant donné que la base de données est fournie sur disquettes, avec mises à jour mensuelles, il n'y a aucun frais de recherche en ligne. On a commencé à offrir le DDS sur disquettes aux abonnés au début de 1993.

Service de recherche en ligne WCAT Online

On continuera d'offrir aux abonnés la base de données en texte intégral du service de recherche en ligne *WCAT Online*. Cependant, au début de 1994, la base de données sera transférée du service de gestion de fichiers privés de la société Southam au service de bases de données électroniques *Informant Online*. La société Southam assumera les frais de mémorisation

SERVICE DE L'INFORMATION

Bibliothèque

Acquisitions et croissance des bases de données

Les acquisitions servent habituellement d'indicateur de la croissance ou de la stabilité de la collection d'une bibliothèque. Toutefois, même si le nombre d'acquisitions continue à fournir des renseignements utiles sur la taille physique de la bibliothèque, la croissance des bases de données peut aussi servir d'indicateur de son degré d'activité. Les données figurant ci-dessous tiennent compte de ces deux indicateurs. La croissance des bases de données ne reflète pas seulement le nombre de documents acquis, mais aussi le nombre de points d'accès créés pour accéder à ces documents.

Pendant la période visée par ce rapport, la bibliothèque a fait l'acquisition de 498 livres et documents gouvernementaux. Le personnel a versé 215 notices au fichier de causes judiciaires *Juris* (index de noms de causes judiciaires) et 2 844 notices à la base de données de la bibliothèque (index des périodiques et de la documentation éphémère). La bibliothèque a emprunté 921 documents grâce à des prêts inter-bibliothèques.

Abonnements

On a évalué les périodiques et les guides à feuilles mobiles afin d'annuler l'abonnement aux documents les moins utiles. On a ainsi annulé l'abonnement à seize périodiques et à sept services de mise à jour des feuilles mobiles.

L'examen des guides à feuilles mobiles a permis de constater qu'il était plus rentable de remplacer un guide au complet tous les deux ou trois ans plutôt que de le mettre à jour constamment. À l'avenir, seuls les périodiques essentiels seront tenus à jour grâce au service de mise à jour des feuilles mobiles. On examinera chaque année les périodiques jugés essentiels.

Services de référence et de renseignements

La demande pour ces services continue de croître. L'introduction du service de fiches analytiques sur disquettes (*DDS On Disk*, ci-après *DDS* sur disquettes) en janvier 1993 a entraîné une baisse des demandes provenant de l'extérieur de Toronto et visant à faire effectuer des recherches en ligne dans les sommaires des décisions du Tribunal. Néanmoins, la bibliothèque a répondu à un plus grand nombre de demandes de renseignements en 1993 qu'en 1992. En 1992 (soit la première année où l'on a systématiquement tenu un registre du nombre de demandes de renseignements), le personnel a répondu à 910 questions de référence et à 687 demandes de renseignements d'orientation. En 1993, les chiffres étaient de 1 064 et 757 respectivement. Les questions de référence vont de questions nécessitant de simples recherches rapides dans une des bases de données de la bibliothèque à des questions exigeant la mise en oeuvre de projets complexes comportant des recherches manuelles et en ligne dans les ressources de la bibliothèque ainsi que dans les bases de données et les collections de bibliothèques extérieures. Les renseignements d'orientation concernent l'emplacement des documents ainsi que les ressources et les services de la bibliothèque.

Les clients de l'extérieur continuent de représenter une part considérable de la clientèle de la bibliothèque, tant pour les demandes de renseignements faites en personne que par téléphone.

rapports rédigés par les conseillers et les assessseurs médicaux du Tribunal et portant sur des questions médicales générales qui sont fréquemment soulevées dans le domaine des accidents du travail.

Le *Groupe d'étude sur les maladies professionnelles* (groupe créé par le ministre du Travail en 1991 afin de mener une enquête sur les recherches et les sources de renseignements dans le domaine des maladies professionnelles) a jugé que la collection du Tribunal constituait un élément important des ressources de la province servant à recueillir et à diffuser les renseignements et les résultats de recherche sur les maladies professionnelles.

Base de données

En 1993, le BLM a commencé à utiliser une base de données conçue par la directrice du Service de l'information en vue de faciliter le suivi : de la nature des questions médicales soulevées au Tribunal; du type d'enquêtes menées par le BLM; des décisions où les jurys se servent des preuves établies lors de ces enquêtes; du nom des assessseurs de qui le Tribunal a obtenu un témoignage d'expert. Il est possible d'effectuer des recherches dans la base de données en partant du numéro de dossier du Tribunal, du numéro de décision, de la question médicale et du nom de l'assesseur ou du conseiller médical. La base de données aidera le BLM à analyser la nature et l'importance de son volume de travail ainsi que des enquêtes médicales menées par le Tribunal. On s'attend aussi à ce que cette base de données permette de repérer plus facilement les renseignements existant au Tribunal qui pourraient être utiles dans le traitement d'appels comportant des faits médicaux ayant déjà fait l'objet de recherche.

Conseillers médicaux

À la fin de 1992, le D^r Tom Morley, neurochirurgien, a donné sa démission. Le D^r Morley, qui était l'un des conseillers médicaux originaux du Tribunal, a contribué de façon significative à l'accroissement et au développement des connaissances du Tribunal dans le domaine médical. Il convient particulièrement de noter l'article qu'il a publié dans le *Compensation Appeals Forum* (vol. 4, n^o 1, 1989) intitulé *Legal and Medical Attitudes - Aspects of Causation*. Cet article fait partie des documents de formation remis aux nouveaux membres de jurys.

Depuis janvier 1993, le D^r Ross Fleming remplace le D^r Morley. Le D^r Fleming, un neurochirurgien d'expérience, a été un assesseur du Tribunal par le passé et a été chef de la Division de neurochirurgie du *Toronto Western Hospital* pendant près de vingt ans. Il occupe actuellement un poste de professeur au département de chirurgie de l'Université de Toronto et a siégé au conseil de nombreuses sociétés professionnelles éminentes au niveau national et international.

Assesseurs médicaux

Le Tribunal continue à attirer des assessseurs médicaux comptant parmi les spécialistes médicaux les plus éminents de la province. En outre, le Tribunal s'est efforcé de recruter des femmes médecins compétentes ainsi que des médecins de milieux culturels et linguistiques divers.

Travailleurs juridiques, étape postérieure à l'audience

Lorsqu'un jury estime essentiel d'obtenir des renseignements supplémentaires après la tenue d'une audience, il transmet sa demande aux travailleurs juridiques chargés de coordonner les enquêtes à cette étape du processus. Ces travailleurs juridiques relèvent du travailleur juridique principal, étape postérieure à l'audience.

Bureau de liaison médicale

Le Bureau de liaison médicale (BLM) coordonne et supervise les relations du Tribunal avec le corps médical. En outre, il a pour tâche de faciliter la compréhension et l'utilisation des preuves médicales dans les activités du Tribunal.

Le Tribunal ayant intérêt à ce que les jurys puissent fonder leurs décisions sur des preuves médicales suffisantes et appropriées, le BLM examine toutes les descriptions de cas afin de relever les cas où les questions médicales sont nouvelles ou susceptibles d'être problématiques ou complexes. Les cas relevés sont ensuite transmis aux conseillers médicaux du Tribunal afin d'assurer que l'examen médical de la lésion du travailleur a été effectué de façon complète, que le dossier comprend, au besoin, l'opinion de spécialistes compétents et qu'il y a bien eu identification des problèmes liés aux questions médicales au sujet desquels le jury pourrait nécessiter des éclaircissements.

À l'étape préalable à l'audience, les conseillers médicaux peuvent recommander que l'on obtienne des précisions des médecins traitants du travailleur. En outre, ils peuvent recommander que l'on sollicite l'opinion d'un assesseur médical si le diagnostic sur l'état de santé du travailleur n'est pas clair, s'il existe une question médicale complexe nécessitant des éclaircissements ou si l'opinion des spécialistes compétents sur la question diffère manifestement.

À l'étape postérieure à l'audience, le jury peut ordonner que l'on effectue un examen plus poussé du cas et demander au BLM de l'aider à rédiger des questions précises susceptibles d'être utiles pour clarifier les questions médicales qui le préoccupent. Les conseillers médicaux aident le BLM à formuler toute question supplémentaire pertinente à l'intention du jury d'audience.

En plus de s'occuper des preuves médicales liées à des cas particuliers, le BLM coordonne la vérification des questions médicales abordées dans les décisions du Tribunal afin d'obtenir le point de vue professionnel des assesseurs médicaux sur la façon dont on y traite de la théorie et des faits médicaux. Cette vérification permet au Tribunal d'évaluer ses méthodes et ses pratiques en matière de questions et de preuves médicales et l'aide dans l'organisation et les séances de formation médicale destinées aux membres et au personnel du Tribunal.

Le BLM continue de déposer à la bibliothèque du Tribunal les rapports médicaux et les transcriptions provenant des spécialistes du Tribunal. Ces documents comprennent des renseignements sur des questions médicales ou scientifiques particulières pouvant être utiles dans le traitement d'autres appels. Tout renseignement pouvant permettre l'identification d'une personne est enlevé de ces rapports et transcriptions, et les documents cités dans les rapports sont placés dans le classeur de documentation éphémère de la bibliothèque. Le Tribunal possède ainsi une collection de rapports médicaux sur des questions particulières aux accidents du travail qui est unique dans le régime ontarien d'indemnisation des travailleurs, et cette collection est accessible au public. La bibliothèque offre aussi des

accidents du travail, c'est-à-dire des cas relevant de l'article 71 (accès au dossier du travailleur de l'article 23 (examen médical exigé par l'employeur) et de l'article 17 (droit d'intenter une action en dommages-intérêts).

Le SRND ne s'occupe toutefois pas des cas de renforcement visés par les articles 53 et 54 de la Loi, car ces cas sont confiés à un avocat principal du BCJT.

Les avocats du BCJT supervisent tous les aspects juridiques du travail accompli par le SRND. Environ 32 pour 100 de tous les cas relèvent de dispositions particulières de la Loi et soulèvent parfois des questions juridiques complexes.

Le SRND est dirigé par un chef de service.

Rédacteurs de descriptions de cas

Les rédacteurs de descriptions de cas doivent préparer les dossiers en vue des audiences en suivant un modèle normalisé et en respectant des délais d'exécution.

Le groupe est dirigé par un avocat principal du BCJT.

Travailleurs juridiques, étape préalable à l'audience

Une fois la description de cas rédigée, le cas est inscrit au calendrier des audiences et confié à un travailleur juridique ou à un avocat. Environ 90 pour 100 des cas sont confiés à des travailleurs juridiques qui ont pour tâche de régler les problèmes pouvant survenir avant les audiences et, au besoin, de répondre aux questions des parties concernant la préparation de leur cas.

Avocats

Les avocats s'occupent d'un nombre restreint de cas compliqués qui font intervenir des questions juridiques nouvelles ou qui présentent un intérêt particulier pour le Tribunal.

À la demande des jurys, les avocats peuvent assister aux audiences afin de contre-interroger des témoins ou de présenter certains éléments de preuve, habituellement sous la forme d'un témoignage d'expert fourni par l'un des assessseurs médicaux du Tribunal. Leur rôle consiste à faire en sorte que les jurys disposent de tous les éléments de preuve nécessaires. À la demande des jurys, les avocats peuvent aussi formuler des observations sur les questions juridiques examinées, soit par écrit soit oralement au cours de l'audience. Cependant, ils ne font aucune observation sur les questions de faits et doivent intervenir de façon aussi impartiale que possible. Les avocats supervisent de nombreuses tâches accomplies par les travailleurs juridiques et leur apportent leur aide.

En 1992 et 1993, le BCJT comptait cinq avocats, mises à part l'avocate générale et une stagiaire. Parmi les questions importantes qui ont nécessité l'intervention des avocats, citons les questions liées à l'interprétation des dispositions de la Loi relatives au renforcement ainsi que celles liées aux demandes d'indemnité pour stress au travail.

Enfin, les avocats du BCJT s'occupent aussi des demandes de révision judiciaire.

Le conseiller juridique du Tribunal examine les questions de droit relatives au cas et fournit, au besoin, au jury d'audience et aux parties une copie des décisions particulièrement importantes rendues par le Tribunal et d'autres organismes. En outre, il aide à clarifier les questions que le jury est susceptible d'examiner et renseigne les représentants des deux parties sur le processus d'audience du Tribunal.

Tous les éléments de preuve, y compris la description de cas, doivent être déposés et distribués aux parties trois semaines avant l'audience.

De façon à ce qu'ils puissent en prendre connaissance avant l'audience, on transmet aux trois membres du jury les documents suivants quelques jours avant la date de l'audience : la description de cas, tout document qui y a été ajouté à la demande des parties ainsi que tout document découlant des travaux effectués par le BLM ou le conseiller juridique du Tribunal.

Au cours de l'audience, chacune des parties peut présenter toute preuve documentaire qu'elle juge essentielle et faire comparaître tout témoin. Cependant, la partie qui compte se prévaloir de ce droit doit en aviser au moins trois semaines à l'avance le Tribunal ainsi que l'autre partie. Cette dernière ou son représentant ainsi que tout membre du jury peuvent contre-interroger les témoins. Habituellement, le travailleur comparait comme témoin.

Une fois tous les éléments de preuve présentés, les parties prononcent leur plaidoyer concernant la preuve et le droit et l'audience se termine. Le jury d'audience peut toutefois décider de convoquer l'audience à nouveau s'il conclut que des éléments de preuve ou des observations supplémentaires sont nécessaires.

À la suite de l'audience, le jury prend sa décision en suivant un processus comportant toute une série d'étapes : tenue de réunions, rédaction de motifs provisoires, examen de ces motifs, nouvelle rédaction, tenue d'autres réunions, etc. Le président du jury est responsable de la rédaction des motifs; cependant, les trois membres du jury participent pleinement au processus de décision. Le jury peut soumettre sa décision au processus d'examen des projets de décisions. Une fois la décision rendue, il arrive que le Tribunal reçoive une demande de réexamen, qu'il doit répondre à une plainte faite au Bureau de l'ombudsman ou que la décision fasse l'objet d'une révision judiciaire.

VICE-PRÉSIDENTS, MEMBRES ET PERSONNEL CADRE

Le lecteur trouvera à l'annexe B la liste des vice-présidents, des membres, du personnel cadre et des conseillers médicaux en fonction pendant la période visée par ce rapport, de même qu'un compte rendu des changements apportés à la liste d'assesseurs et un bref résumé du curriculum vitae des vice-présidents et des membres nommés par décret récemment.

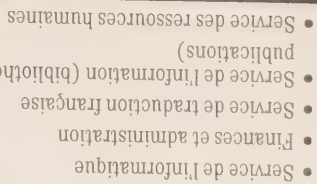
BUREAU DES CONSEILLERS JURIDIQUES DU TRIBUNAL

Le Bureau des conseillers juridiques du Tribunal (BCJT) se compose de six groupes relevant de l'avocate générale.

Service de réception des nouveaux dossiers

Le Service de réception des nouveaux dossiers (SRND) reçoit toutes les demandes d'appel et répond aux questions du public concernant les appels et la procédure à suivre. Il est principalement chargé des demandes liées à des dispositions particulières de la Loi sur les

Figure 2 -- LA PROCEDURE D'APPEL



LE RAPPORT DU TRIBUNAL

LA PROCÉDURE D'APPEL

La procédure d'appel suivie au Tribunal est représentée à la page suivante sous forme de diagramme (figure 2, p. 26). Le lecteur trouvera ci-après le résumé de cette procédure, depuis le moment où le Tribunal est saisi d'un appel jusqu'au moment où il rend sa décision.

Les demandes d'appel parviennent d'abord au Service des dossiers qui les transmet ensuite au Service de réception des nouveaux dossiers (SRND). Ce service est chargé d'obtenir le dossier du travailleur de la Commission des accidents du travail ainsi que d'autres renseignements préliminaires. Une fois son travail terminé, le SRND transmet le dossier au Bureau des conseillers juridiques du Tribunal (BCJT) où le cas est préparé en vue de l'audience. L'élément principal de cette préparation est la description de cas, laquelle comporte une copie indexée de tous les documents utiles provenant du dossier de la Commission. La description de cas peut aussi comporter un résumé des faits essentiels liés au cas et préciser les questions en litige. Une fois rédigée, la description de cas est transmise à la Commission ainsi qu'au travailleur et à l'employeur, ou à leurs représentants, qui peuvent demander que l'on supprime, ajoute ou modifie certaines parties.

(Des les premières étapes du traitement, le Tribunal demande au travailleur s'il consent à ce que l'employeur ait accès à certains documents qui se trouvent dans son dossier. Si le travailleur refuse, le traitement du cas est interrompu jusqu'à ce que la question du droit d'accès de l'employeur aux documents liés au litige ait été tranchée par un jury du Tribunal au cours d'un processus spécial.)

On transmet aussi la description de cas au Bureau de liaison médicale (BLM) du Tribunal, au conseiller juridique affecté au cas ainsi qu'au Service d'inscription des cas au calendrier des audiences (SICCA). Le SICCA fixe une date d'audience si cela n'a pas été fait au moment de l'envoi de la description de cas aux parties. Le BLM identifie les questions médicales liées au cas, vérifie les éléments de preuve médicale au dossier et consulte au besoin les conseillers médicaux du Tribunal au sujet des omissions ou des lacunes importantes. Pour combler les manques décelés dans les éléments de preuve médicale, on procède à une enquête plus poussée, par exemple en obtenant de plus amples renseignements ou des éclaircissements des médecins dont les rapports figurent dans le dossier de la Commission ou en obtenant des conseils ou l'opinion des médecins dont le nom figure sur la liste des assessseurs médicaux du Tribunal nommés par décret. Si le problème ne peut être réglé avant la tenue de l'audience, on en informe le jury d'audience, et ce dernier peut ordonner que l'on termine l'enquête après l'audience.

Dans tous les cas, le jury d'audience peut, au cours de l'audience et du processus de décision, juger nécessaire de faire effectuer une enquête supplémentaire, médicale ou autre. Il donne alors des instructions au BCJT pour qu'il coordonne et dirige une enquête après la tenue de l'audience. Les résultats des enquêtes effectuées par le Tribunal, qu'elles aient lieu avant ou après l'audience, sont communiqués aux parties. Ces dernières ont le droit de présenter des observations concernant les résultats des enquêtes.

Le jury considère ordinairement qu'un rapport médical écrit suffit à établir le témoignage d'un médecin. Cependant, si le jury a besoin d'éclaircissements ou d'explications sur un rapport et estime que des éclaircissements écrits sont insuffisants, il peut demander que le médecin auteur du rapport soit appelé à témoigner et qu'il soit interrogé.

À la fin de 1993, cinq demandes de révision judiciaire étaient en instance. Ces demandes visaient les décisions suivantes du Tribunal :

- *Décision n° 824/90* (2 avril 1992);
- *Décision n° 716/91* (1993), 26 W.C.A.T.R. 93;
- *Décision n° 33/93* (20 avril 1993);
- *Décision n° 385/93* (4 août 1993);
- *Décision n° 439/93I* (13 juillet 1993).

Il y avait aussi une demande de révision judiciaire de décisions préliminaires rendues à l'égard de l'appel faisant l'objet du dossier n° 93-0199 du TAAT.

Autre instance

Le 2 décembre 1992, la Cour de l'Ontario (Division générale) a émis une injonction sommant un requérant de ne pas présenter une demande en vertu de l'article 17 au Tribunal jusqu'à la tenue d'un procès ou tout règlement définitif de l'affaire. Le Tribunal a obtenu le titre d'intervenant bénévole et s'est opposé à l'injonction en invoquant des motifs de compétence. Le 4 février 1993 l'autorisation d'interjeter appel de cette décision a été accordée et, le 9 juin 1993, la Cour divisionnaire a annulé l'injonction. La décision par laquelle l'injonction a été annulée fait maintenant l'objet d'une demande d'autorisation d'interjeter appel.

Il n'était pas nécessaire de trancher cette question étant donné la décision sur la compétence, mais la majorité du jury a conclu que les décisions de la Cour suprême n'avaient pas d'incidence sur la décision provisoire portant sur le pouvoir discrétionnaire possible du Tribunal de refuser d'examiner une décision liée à la Charte, même si sa compétence pour le faire n'est pas remise en cause. La minorité était d'avis que, lorsqu'un tribunal est compétent pour se prononcer sur des questions liées à la Charte, il est tenu d'exercer cette compétence.

Autres questions

Entre autres questions de nature juridique ou médicale dont le Tribunal a été saisi, citons : la rétroactivité des paiements d'intérêt (*décisions* n^{os} 483/88A (2 juillet 1992), 819/89 (10 juillet 1992), 168/92 (1992), 22 W.C.A.T.R. 279, et 109/91 (1992), 24 W.C.A.T.R. 43); l'effet d'un trouble de la démarche dans une jambe sur l'autre jambe (*décision* n^o 67/92 (6 août 1993)); le calcul d'une deuxième pénalité après une longue période de temps sans pénalité (*décisions* n^{os} 249/93 (1993), 27 W.C.A.T.R. 220, et 770/91 (1992), 22 W.C.A.T.R. 219); le recouvrement des paiements excédentaires et la renonciation à ces paiements (*décisions* n^{os} 24F2 (1992), 22 W.C.A.T.R. 1, 879/92I (8 janvier 1993), 624/92 (1993), 25 W.C.A.T.R. 175, 118/93 (5 mars 1993), 34/92I2 (1993), 27 W.C.A.T.R. 105, 327/93 (7 juin 1993) et 241/93 (7 juin 1993)).

RÉVISIONS JUDICIAIRES

En 1992, la Cour divisionnaire a entendu des demandes de révision judiciaire visant les *décisions* n^{os} 977/89 (1990), 13 W.C.A.T.R. 298, 155/90 (12 mars 1990) et 32/91 (1991), 18 W.C.A.T.R. 258.

La Cour divisionnaire a rejeté ces trois demandes.

La demande de révision judiciaire visant la *décision* n^o 801/88 (23 novembre 1988) a été rejetée pour cause de retard le 29 décembre 1992.

En 1993, la Cour divisionnaire a entendu des demandes de révision judiciaire visant les neuf décisions suivantes du Tribunal :

- *décision* n^o 497/90 (27 septembre 1990) (demande entendue le 13 janvier 1993);
- *décision* n^o 1030/89 (1991), 20 W.C.A.T.R. 46 (demande entendue le 4 février 1993);
- *décisions* n^{os} 936/90 (30 janvier 1991) et 936/90R (16 septembre 1992) (demandes entendues le 12 mai 1993);
- *décisions* n^{os} 927/89 (1992), 23 W.C.A.T.R. 33, 287/90 (20 juillet 1992), 288/90 (20 juillet 1992) et 289/90 (20 juillet 1992) (demandes entendues ensemble le 3 juin 1993);
- *décision* n^o 345/91 (18 mars 1992) (demande entendue le 27 septembre 1993).

La Cour divisionnaire a rejeté toutes ces demandes.

La demande d'autorisation d'interjeter appel à la Cour d'appel visant la décision par laquelle la Cour divisionnaire avait confirmé la *décision* n^o 656/88 (9 décembre 1988) du Tribunal a été entendue le 3 mai 1993. Une demande d'autorisation d'interjeter appel à la Cour d'appel visant les *décisions* n^{os} 927/89, 287/90, 288/90 et 289/90 du Tribunal a été entendue le 6 décembre 1993.

Les deux demandes ont été rejetées.

La demande de révision judiciaire visant la *décision* n^o 917/88 (11 août 1989) a été abandonnée.

La Charte canadienne des droits

D'autres cas de douleur chronique ont amené le Tribunal à étudier le nouveau barème des taux relatifs aux traumatismes psychiques et aux troubles comportementaux. Se reporter aux *décisions* nos 722/92 (29 avril 1993) et 571/91 (24 février 1992). Se reporter aussi à la *décision* n° 389/91 (6 février 1992). La *décision* n° 741/90 (5 février 1992) a confirmé l'utilisation de ce barème par la Commission dans les cas de fibromyalgie.

La *Charte canadienne des droits et libertés* fait partie intégrante de la Constitution canadienne et protège les libertés civiles des Canadiens. Le paragraphe 24 (1) de la Charte prévoit que toute personne victime d'une violation de ses droits et libertés peut s'adresser à un «tribunal compétent» pour obtenir la réparation que le tribunal estime juste dans les circonstances. Par ailleurs, le paragraphe 52 (1) de la Constitution prévoit que la Constitution est la «loi suprême» du pays et que toute loi incompatible avec elle est «inopérante, dans la mesure de cette incompatibilité».

Comme on le faisait remarquer dans le rapport annuel de 1990, la Tribunal n'a eu à traiter que quelques cas de contestation fondée sur la Charte. La *décision* n° 534/90I (1990), 17 W.C.A.T.R. 187, était la décision la plus détaillée du Tribunal touchant à la Charte à la fin de 1991. Le jury a adopté le raisonnement de la Cour d'appel de l'Ontario dans la cause *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)* (1989), 62 D.L.R. (4th) 125, et il a conclu que le Tribunal n'est pas un tribunal compétent au sens du paragraphe 24 (1) de la Charte mais que les tribunaux peuvent être saisis de toute contestation de leur loi habilitante aux termes du paragraphe 52 (1). Le jury a demandé aux parties de lui présenter des observations sur la question de savoir si le Tribunal était compétent pour refuser d'être saisi d'une contestation fondée sur la Charte en vertu du paragraphe 52 (1).

Par la suite, la Cour suprême du Canada a rendu quatre arrêts portant sur les rapports entre la Charte et les tribunaux administratifs. Bien que ces arrêts n'eussent aucune incidence sur la décision du jury relativement au paragraphe 24 (1), ils ont clarifié et modifié le droit concernant le paragraphe 52 (1). Le jury a réétudié ce paragraphe en fonction du nouveau droit.

Le jury auteur de la *décision* n° 534/90 (1992), 23 W.C.A.T.R. 121, a conclu que le paragraphe 52 (1) ne rend pas un tribunal compétent pour juger des contestations fondées sur la Charte; cette compétence n'existe que si la législation a, explicitement ou implicitement, manifesté l'intention de la lui conférer. Pour juger de l'intention de la législation, il est particulièrement important de savoir si la loi habilitant le tribunal l'autorise à trancher des questions de droit. Il faut aussi tenir compte d'autres facteurs, notamment examiner : si les tâches ordinaires du tribunal nécessitent qu'il décide de questions de droit; si son travail habituel exige l'application de lois ou de règlements législatifs complexes; si les réparations qu'il peut accorder seraient efficaces; s'il possède des compétences spécialisées lui permettant de contribuer de façon valable à l'interprétation des dispositions constitutionnelles visées. Le jury a aussi conclu qu'il fallait prendre en compte les questions d'ordre pratique. Le jury a conclu que la compétence d'un tribunal peut varier selon les questions en litige.

En fonction des facteurs susmentionnés, le jury auteur de la *décision* n° 534/90 a conclu qu'il serait en général acceptable de conclure que la législation a voulu donner au Tribunal la compétence pour se prononcer sur des questions liées à la Charte. Toutefois, il a aussi conclu que le Tribunal n'avait pas la compétence pour examiner les questions liées à la Charte en l'espèce, car il n'avait pas le pouvoir d'accorder une réparation appropriée.

que les deux organismes sont essentiellement d'accord sur le traitement des cas de ce genre. Le conseil d'administration a jugé inutile d'ajouter au Tribunal d'étudier la *décision* n° 915 (1987), 7 W.C.A.T.R. 1, et la *décision* n° 915A (1988), 7 W.C.A.T.R. 269. Dans ces deux décisions, le Tribunal a conclu que la douleur chronique ouvrait droit à une indemnité à compter du 27 mars 1986. Toutefois, par la suite, le conseil d'administration a enjoint au Tribunal de réétudier un certain nombre de ses décisions dans lesquelles il avait reconnu le droit à une indemnité temporaire pour douleur chronique avant le 27 mars 1986.

L'annexe C du Troisième rapport et le Rapport annuel 1991 expliquent en détail le traitement des questions liées à la douleur chronique et à la fibromyalgie par la Commission et par le Tribunal. Se reporter aussi à la *décision* n° 12R2 (1993), 26 W.C.A.T.R. 1. La nouvelle étude du Tribunal a été suspendue jusqu'à la décision que prendra le conseil d'administration quant à une demande voulant qu'il réexamine sa directive fondée sur l'article 93. À la fin de la période visée par le présent rapport, le Tribunal était en train de communiquer avec les parties et de fixer les dates de consultations préparatoires aux fins de l'audition de ces cas. Au cours de la période visée par le présent rapport, le Tribunal a rendu deux décisions définitives sur ces questions, ainsi qu'un certain nombre de décisions provisoires. Il a obtenu les observations de la Commission dans plusieurs de ces cas et devrait être en mesure de rendre d'autres décisions avant la parution de son prochain rapport.

Les questions en litige dans les deux décisions définitives concernaient, entre autres, les rapports entre la Commission et le Tribunal dans le cadre d'une étude fondée sur l'article 93. Le jury auteur de la *décision* n° 757R (29 juin 1993) était d'accord avec celui de la *décision* n° 42/89 (1989), 12 W.C.A.T.R. 85, quant à l'importance qu'il convient d'accorder, lors de l'étude du cas que le Tribunal est enjoint de réétudier, à l'interprétation que fait la Commission des principes directeurs et du droit. Tout en étant tenu d'appliquer l'interprétation de la Commission lorsqu'il étudie le cas d'espèce, le Tribunal doit être convaincu que ce cas tombe bien sous le coup du paragraphe 93 (1). Dans la *décision* n° 757R, le jury a conclu, en s'appuyant sur le libellé de la première décision et sur des évaluations médicales plus récentes, que l'invalidité indemnisable du travailleur était due à des troubles organiques et non à la douleur chronique. La *décision* n° 757 (30 mai 1988) ne portait donc pas sur la façon dont la Commission avait interprété la date de l'effet rétroactif dans les cas de douleur chronique et le Tribunal ne s'est pas senti tenu de la réétudier. La Commission a reçu l'ordre de verser une indemnité d'invalidité totale à caractère temporaire pour troubles organiques, comme le prévoyait la première décision.

Le Tribunal a aussi refusé de réétudier la *décision* n° 12R2, mais pour des motifs différents. Cette décision portait sur des faits uniques puisqu'il s'agissait du seul cas de douleur chronique ayant fait l'objet d'un examen et d'une décision par la Commission avant l'adoption de sa politique sur la douleur chronique. Le jury a étudié en détail le traitement du cas du travailleur et l'incidence qu'une étude fondée sur l'article 93 aurait sur lui. Outre le critère proposé dans la *décision* n° 42/89 pour décider s'il convient de mener une étude fondée sur l'article 93, le jury auteur de la *décision* n° 12R2 a conclu que d'autres préoccupations, notamment les impératifs de la justice naturelle, pouvaient justifier de décider de ne pas réétudier une décision. Sans minimiser l'importance de plusieurs aspects procéduraux, le souci principal du jury était de souligner que la Commission avait appliqué rétroactivement une de ses politiques à une décision définitive du Tribunal qui avait été rendue neuf mois avant l'adoption de cette politique. Le Tribunal a refusé de réétudier ce cas et a donné à la Commission la directive de mettre en oeuvre sa décision première.

Tarification par incidence

La Nouvelle méthode expérimentale de tarification par incidence (NMETI) est un programme de tarification visant à réduire le fardeau d'un groupe de taux en attribuant une partie de ses coûts aux employeurs dont les coûts d'accident sont élevés. On compare les coûts réels d'un employeur au cours d'une année particulière au taux de cotisation du groupe de taux. Les coûts de l'employeur pour une année donnée sont pris en considération lors du calcul de ses cotisations pour chacune des trois années suivantes.

La *décision n° 709/91* (1992), 23 W.C.A.T.R. 214, porte sur l'interprétation appropriée des dispositions transitoires adoptées lors de la mise en oeuvre d'une nouvelle formule aux fins de la NMETI par la Commission en 1987. Le jury a confirmé plusieurs décisions antérieures du Tribunal selon lesquelles ce dernier est compétent pour connaître de tous les aspects de l'appel d'un employeur en matière de cotisation, mais qu'il doit cependant tenir compte des effets systémiques de cet appel sur l'administration de la Commission. Compte tenu de la preuve présentée dans la *décision n° 709/91*, le jury a accepté l'interprétation donnée par l'employeur à la formule « la plus favorable des trois ». Il a laissé à la Commission la possibilité d'élaborer une politique qui permettrait de résoudre les cas futurs ou de poursuivre ses négociations avec l'association industrielle concernée. Par ailleurs, le Tribunal a été saisi d'un appel mettant en jeu des questions similaires dans la *décision n° 214/931* (1993), 27 W.C.A.T.R. 192, mais le jury en a autorisé le retrait à la demande de l'employeur pour permettre à la Commission de réexaminer sa décision.

La *décision n° 509/92* (1993), 28 W.C.A.T.R., est aussi intéressante à cet égard. Elle porte sur l'incidence de l'assurance automobile sans égard à la responsabilité sur l'établissement des cotisations dans le cadre de la NMETI.

Employeurs associés

La *décision n° 43/90* (1992), 23 W.C.A.T.R. 86, fait remarquer que ni la Loi ni les règlements ne définissent le terme « employeur associé ». Le jury en a conclu qu'il n'était pas acceptable de la considérer que deux sociétés sont liées aux fins de l'établissement de leur cotisation en se fondant seulement sur des liens de parenté. Se reporter aussi à la *décision n° 778/90* (1992), 23 W.C.A.T.R. 143, qui examine les rapports entre un mandataire et un sous-traitant aux termes du paragraphe 9 (3) de la Loi d'avant 1989, ainsi que la pertinence de lever le voile corporatif.

Dans la *décision n° 457/90* (1992), 22 W.C.A.T.R. 68, le jury a conclu que, même si les diverses usines d'un employeur possédaient des numéros de compte distincts à la Commission, il ne convenait pas de traiter une usine donnée comme une entité distincte aux fins de l'imposition de cotisations de démerite si cette usine faisait partie intégrante de l'exploitation de la société et que toutes les usines appartenaient au même groupe de taux.

Douleur chronique et fibromyalgie

La douleur chronique et la fibromyalgie présentent depuis toujours un grand intérêt pour tous ceux qui s'occupent de l'indemnisation des travailleurs. La Commission et le Tribunal ont tout d'abord défendu des points de vue différents sur la question de savoir si la douleur chronique entrerait dans le champ d'application de la *Loi sur les accidents du travail*. Toutefois, l'étude fondée sur l'article 93 (à l'époque l'alinéa 86 n) que le conseil d'administration de la Commission a menée le 1^{er} juin 1990 (*Review of Decisions No. 915 and 915A* (1990), 15 W.C.A.T.R. 247) révèle

malgré l'absence de preuves épidémiologiques qui la justifieraient s'il existe des preuves, médicales ou non, suffisantes pour le convaincre que, selon la prépondérance des probabilités, il existe un lien de causalité entre le travail et l'invalidité.

Ainsi, le Tribunal a récemment été saisi de questions telles que le lien entre les vibrations ressenties dans tout le corps et l'invalidité due à des troubles dorsaux (*décision n° 373/91* (14 décembre 1992)), entre le cancer du poumon et l'exposition à des émissions de four à coke et à des émanations de soudure (*décision n° 307/89* (10 janvier 1992)) et, enfin, entre le travail manuel et la maladie de Dupuytren (*décision n° 645/93* (1993), 28 W.C.A.T.R.).

Dans les *décisions n°s 134/89* (1993), 26 W.C.A.T.R. 32, et *375/92* (1993), 28 W.C.A.T.R., le Tribunal s'est penché longuement sur le lien entre le cancer du poumon et l'exposition à l'amiante, ainsi que sur des preuves médicales voulant que l'amiantose tende à précéder l'apparition du cancer du poumon. Les jurys ont conclu que l'intensité de l'exposition et la durée de la période de latence sont les deux facteurs principaux dont il faut tenir compte lors de l'évaluation du lien de causalité entre l'amiante et le cancer du poumon. Se reporter aussi à la *décision n° 786/91* (19 janvier 1993), dans laquelle un jury examine des avis médicaux contradictoires à l'égard du lien entre l'exposition au silice et le cancer du poumon en l'absence de silicose.

L'exposition en milieu de travail peut aussi aggraver des états pathologiques préexistants ou rendre le travailleur plus sensible à une substance donnée. La *décision n° 437/92*, (1993), 26 W.C.A.T.R. 181, contient une analyse intéressante de la différence entre l'exposition à des irritants et l'exposition à des sensibilisants dans les cas de troubles asthmatiques. Plusieurs décisions ont porté sur la manière d'évaluer l'asthme aux fins de pension aux termes de la Loi d'avant 1989. Le jury auteur de la *décision n° 740/91* (1993), 25 W.C.A.T.R. 16, a préféré les lignes directrices du Québec aux guides de l'AMA en ce qui a trait à l'évaluation pour pension dans les cas de déficiences pulmonaires. Les lignes directrices du Québec font appel à trois mesures de ces déficiences : le niveau de sensibilité bronchique, le niveau de l'hyperréactivité bronchique et le besoin de médication. Se reporter aussi aux *décisions n°s 304/93* (1993), 27 W.C.A.T.R. 244, et *617/93* (28 octobre 1993) qui portent sur l'évaluation pour pension dans les cas de troubles asthmatiques.

Les déficiences auditives résultant de l'exposition au bruit sont traitées comme des maladies professionnelles aux termes de la Loi. Le Tribunal a maintenant une grande expérience des cas portant sur les déficiences auditives et l'acouphène. Se reporter, par exemple, aux *décisions n°s 789/90* (1992), 22 W.C.A.T.R. 84, *27/92* (20 janvier 1993), *33/92* (20 janvier 1993), *356/92* (1993), 25 W.C.A.T.R. 116, *78/93* (22 octobre 1993), et *405/93* (18 octobre 1993). Dans la *décision n° 434/89A* (1993), 27 W.C.A.T.R. 1, le jury s'est penché sur la question de la date du début de l'admissibilité à l'indemnité prévue par la politique de 1988 de la Commission sur les déficiences auditives. Rappelons que cette politique ramenait les conditions d'admissibilité à une perte de 35 décibels dans une oreille et de 25 décibels dans l'autre. Le jury s'est dit d'accord avec la *décision n° 915A* (1988), 7 W.C.A.T.R. 269, selon laquelle la *common law* impose des limites à l'effet rétroactif lorsque l'annulation d'une décision fondée sur les progrès du droit ou de la médecine entraîne une modification de politique. Le jury a décidé que la date appropriée du début de l'admissibilité à l'indemnité était le 10 juillet 1976 puisque c'est à ce moment là que la Commission avait pris connaissance des progrès médicaux pertinents ou qu'elle aurait dû le faire.

Le Tribunal semble avoir abandonné l'approche qu'il prenait antérieurement dans les cas de stress. Cette approche, que proposait la *decision n° 918* (1988), 9 W.C.A.T.R. 48, est la suivante : les facteurs de stress professionnels doivent être inhabituels ou être la cause principale de l'invalidité. Ce critère n'a été appliqué à aucun cas au cours de la période de deux ans visée par le présent rapport.

En revanche, le Tribunal a, au cours de la même période, élaboré un autre critère qui tient compte du problème posé par la manière d'évaluer les facteurs de stress professionnels et la réaction subjective du travailleur à ces facteurs. Dans la *decision n° 631/91* (1992), 21 W.C.A.T.R. 251, le jury a décidé que le critère devait être le suivant : Existe-t-il des facteurs de stress, même situation trouverait-elle ces facteurs de stress potentiellement invalidants? Dans la *decision n° 717/88* (19 août 1992), le jury a conclu qu'il convenait d'appliquer le critère de la personne raisonnable pour décider s'il existait des facteurs de stress professionnels. Se reporter aussi aux *decisions n°s 636/91* (1992), 21 W.C.A.T.R. 277, et *672/92* (11 décembre 1992). Ce critère constitue un juste milieu entre l'objectivisme et le subjectivisme exclusifs dans l'évaluation des facteurs de stress professionnels.

Les cas de stress sont particulièrement difficiles à trancher et peuvent exiger un examen détaillé du lieu de travail. Il est intéressant de remarquer que deux cas dont le Tribunal a été saisi au cours de la période visée étaient fondés sur des allégations de discrimination et de harcèlement. Dans la *decision n° 198/92* (1992), 24 W.C.A.T.R. 155, le jury a décidé que les allégations de discrimination fondées sur la race n'étaient pas objectivement vérifiables et que le stress du travailleur n'était pas indemnisable. Dans la *decision n° 636/91*, le jury a examiné des allégations de discrimination fondée sur le sexe et sur la race à la suite de la fusion de l'unité des hommes et de l'unité des femmes dans un centre correctionnel. Le jury a conclu que les facteurs de stress étaient objectivement graves et qu'ils auraient profondément affecté une personne raisonnablement stable, en ayant à peu près le même effet que sur la travailleuse, et que l'invalidité due au stress de cette dernière était donc indemnisable. Se reporter aussi à la *decision n° 586/91* (1993), 28 W.C.A.T.R., selon laquelle la Loi rend caduc le droit d'interester une poursuite en dommages-intérêts pour le harcèlement sexuel au cours de l'emploi.

La *decision n° 397/92* (28 janvier 1993), qui portait sur un cas de stress présenté par un agent de police, est aussi intéressante. Le jury a fait remarquer que la demande du travailleur aurait tout aussi bien pu être acceptée aux termes de la politique actuelle de la Commission sur l'invalidité psychologique. Cette politique prévoit le droit à une indemnité pour le stress professionnel découlant d'incidents soudains, ébranlants et qui mettent la vie en danger.

Maladies professionnelles

Les cas de maladies professionnelles comprennent les cas de travailleurs qui ont été exposés à des procédés ou à des produits nocifs. Le Tribunal continue d'interpréter le droit en la matière de la même façon. Ainsi, une lésion est indemnisable lorsqu'elle est visée par la définition de «maladie professionnelle» ou par la composante «incapacité» de la définition du terme «accident».

Les cas de maladies professionnelles continuent à soulever des questions qui sont parmi les plus difficiles à trancher puisque le Tribunal doit souvent rendre des décisions en fonction de connaissances médicales et scientifiques incomplètes, voire contradictoires. Comme le rappelle la *decision n° 645/93* (1993), 28 W.C.A.T.R., le Tribunal peut reconnaître le droit à une indemnité

La Loi de 1990 crée un nouveau système d'indemnisation des travailleurs blessés après le 31 décembre 1989. La réadaptation professionnelle est l'élément clé de ce nouveau système. L'ancien système d'évaluation pour pension a été remplacé par un système d'indemnisation en fonction de la perte de gains résultant de la lésion indemnisable. La Loi de 1990 impose aussi une nouvelle obligation à la Commission, à savoir celle d'offrir des services de réadaptation pour réduire la perte de revenus résultant de la lésion indemnisable. Non seulement la réadaptation professionnelle continue-t-elle d'influer sur l'admissibilité aux indemnités d'invalidité partielle à caractère temporaire prévues à l'alinéa 37 (2) b) de la Loi de 1990, mais elle a aussi une incidence sur l'indemnisation permanente du travailleur. La Loi de 1990 oblige à tenir compte des chances de réussite de la réadaptation médicale et professionnelle lors du calcul de la perte de gains future aux termes du paragraphe 43 (7) (ce que l'on appelle habituellement une indemnité pour PEF). La réadaptation, en particulier la réadaptation médicale, est aussi un facteur dans le calcul de la perte non économique aux termes de l'article 42 (indemnité pour PNF).

Trois décisions ont porté sur le rapport entre la réadaptation professionnelle et l'indemnité pour PEF. Se reporter aux *décisions* nos 344/93 (1993), 27 W.C.A.T.R. 259, 500/93 (1993), 27 W.C.A.T.R. 314, et 607/93 (1993), 28 W.C.A.T.R. Se reporter aussi à la *décision* n° 489/93I (29 novembre 1993), qui invitait les parties à présenter des observations sur les indemnités pour PEF. Dans la *décision* n° 344/93, le Tribunal a décidé qu'il pouvait autoriser rétroactivement le programme de réadaptation autogéré d'un travailleur puisqu'il peut, en vertu du paragraphe 86 (3), rendre toute ordonnance que la Commission peut rendre. Le jury a approuvé l'habitude qu'a la Commission d'accorder une indemnité symbolique de maintien pour PEF afin que le travailleur puisse toucher un supplément pour PEF pendant qu'il participe à un programme autorisé de réadaptation professionnelle. Dans la *décision* n° 500/93, le jury a confirmé que la politique de la Commission de verser des suppléments temporaires rétroactivement si l'appel du travailleur est accueilli doit aussi s'appliquer si l'appel porte sur un supplément pour PEF.

Au cours de la période visée par le présent rapport, les jurys ont commencé à préciser de façon proactive les mesures de réadaptation qui s'imposent. Dans un cas, le jury a retenu les services d'un conseiller en réadaptation professionnelle à titre d'expert. Se reporter aux *décisions* nos 924/91 (18 mars 1993), 500/93 et 592/92I (16 février 1993). Les jurys ont aussi enjoint à la Commission de fournir au travailleur des services de réadaptation supplémentaires lorsque les premiers services fournis ne semblaient pas suffire ou lorsque, la situation ayant évolué, le jury était convaincu que le travailleur pourrait dorénavant tirer parti de la réadaptation. Se reporter aux *décisions* nos 490/92 (11 janvier 1993) et 592/92I. Se reporter aussi à la *décision* n° 614/93 (1993), 28 W.C.A.T.R.

Stress professionnel

Les rapports annuels de 1990 et de 1991 font état du fait que la Commission était alors en train d'élaborer une politique sur le stress professionnel chronique, qui s'ajouterait à sa politique sur les cas de stress résultant d'événements traumatiques et qui mettent la vie en danger. Comme la Commission n'a pu mettre au point de politique sur le stress chronique au cours de la période visée par le présent rapport, le Tribunal a continué à trancher de façon ponctuelle les appels en la matière fondés sur la Loi.

Réadaptation professionnelle

Avant l'entrée en vigueur de la Loi de 1990, il n'existait aucune obligation légale d'offrir des services de réadaptation professionnelle. Aux termes de la Loi d'avant 1989 et de celle d'avant 1985, la Commission pouvait offrir de tels services à sa discrétion, et elle avait d'ailleurs élaboré un certain nombre de politiques touchant à cette question. La réadaptation professionnelle pouvait, par ailleurs, avoir une incidence sur l'admissibilité du travailleur aux prestations supplémentaires et aux indemnités d'invalidité partielle à caractère temporaire prévues par ces lois. Dans le cas des travailleurs qui tombent sous le coup des anciennes dispositions, la réadaptation professionnelle influe sur l'admissibilité au supplément temporaire prévu au paragraphe 147 (2) de la Loi de 1990.

Au cours de la période visée par le présent rapport, le Tribunal a rendu sa première décision concernant l'obligation, prévue à l'article 7, de verser des cotisations pour les avantages rattachés à l'emploi pendant l'année qui suit la date d'une lésion professionnelle. Cette disposition est entrée en vigueur en même temps que celles sur le rengagement. Dans la *décision n° 427/921* (1992), 24 W.C.A.T.R. 255, le jury a conclu que les versements d'un employeur à un syndicat aux fins d'un R.E.E.R. prévu dans une convention collective sont des cotisations au sens de l'article 7. Le jury a aussi souligné qu'il existe une certaine ambiguïté au sujet de la question de savoir si la Commission a le pouvoir d'ordonner à l'employeur de verser les cotisations; toutefois, il a approuvé le recours aux pénalités par la Commission, comme mesure visant à faire respecter la Loi, sous réserve d'un réexamen lors du versement des cotisations.

Selon la décision définitive du Tribunal en l'espèce, à savoir la *décision n° 427/92* (1993), 27 W.C.A.T.R. 142, il semble que la politique de la Commission, qui prévoit l'imposition d'une pénalité minimum obligatoire en cas de contravention à l'article 7, ne cadre pas avec le pouvoir discrétionnaire prévu à cet article, ni avec la politique qu'elle a elle-même élaborée en application du paragraphe 54 (13), en utilisant une formulation similaire pour imposer une pénalité. Le jury a donc conclu en l'espèce qu'il ne convenait pas d'imposer de pénalité puisque la somme concernée était faible, que son non-versement n'avait pas causé de graves difficultés au travailleur, que l'employeur avait agi de bonne foi en voulant soumettre une cause type au Tribunal et qu'il avait effectué le versement dès qu'il avait reçu la *décision n° 427/921*.

Avantages rattachés à l'emploi aux termes de la Loi de 1990

Le Tribunal a confirmé le point de vue de la Commission voulant que la *Loi sur l'indemnisation des agents de l'Etat*, qui est une loi fédérale, incorpore les dispositions de la loi ontarienne relatives au rengagement et les rend donc applicables aux travailleurs du gouvernement fédéral employés en Ontario (se reporter à la *décision n° 716/911*).

Tandis que certaines décisions du Tribunal ont confirmé la pénalité maximale (se reporter à la *décision n° 561/91* (1992), 23 W.C.A.T.R. 128), d'autres ont fait preuve de plus de souplesse. En particulier, les jurys ont tenu compte de la situation financière de l'employeur et de la gravité de son manquement (*décisions n°s 730/91* (1992), 24 W.C.A.T.R. 71, *744/91* (1991), 21 W.C.A.T.R. 333, *769/91* (1992), 24 W.C.A.T.R. 94, et *449/92*).

Selon la *décision n° 605/91F* (1993), 25 W.C.A.T.R. 10, il ne convient pas d'appliquer rétroactivement la politique actuelle de la Commission, qui est plus lourde que la précédente, à un employeur qui a interjeté appel d'une pénalité de 50 pour 100.

Quelques décisions rendues en 1992 arrivent aux mêmes conclusions que les décisions antérieures du Tribunal; toutefois, selon des cas plus récents, la Loi de 1990 crée une obligation sans réserve en matière de rengagement. Ces décisions indiquent qu'il est possible de faire un constat de non-conformité lorsqu'un travailleur est licencié après son retour au travail, que la Commission ait ou non donné un avis d'aptitude. Ces décisions concluent aussi que le présumption prévue au paragraphe 54 (10) vaut si le travailleur est licencié dans les six mois, que la Commission ait ou non rendu antérieurement un avis à son égard. (Se reporter, par exemple, aux *décisions* n^{os} 716/91I (1992), 22 W.C.A.T.R. 181, 746/91I2 (1992), 23 W.C.A.T.R. 260, 896/91 (9 juillet 1992), 366/92I (1992), 24 W.C.A.T.R. 199, 449/92 (1992), 25 W.C.A.T.R. 148, et 507/92I (1993), 28 W.C.A.T.R. [la pagination de ce volume n'était pas arrêtée au moment d'aller sous presse], et les comparer à la *décision* n^o 288/91 (1992), 22 W.C.A.T.R. 132.) De récentes décisions du Tribunal ont aussi précisé que rares seront les cas où un avis d'aptitude sera considéré comme insuffisant (se reporter, par exemple, à la *décision* n^o 552/91 (1992), 23 W.C.A.T.R. 183).

Les décisions du Tribunal n'ont pas confirmé la politique actuelle de la Commission voulant qu'un employeur doive avoir un « motif valable » pour pouvoir mettre fin à l'emploi d'un travailleur sans manquer à ses obligations de rengagement. Le Tribunal estime que l'esprit de la Loi de 1990 est de placer le travailleur dans la même situation que s'il n'avait pas été victime d'un accident du travail. Ce raisonnement s'appuie aussi sur un arrêt de la Cour suprême du Canada à propos d'une disposition similaire d'une loi du Québec (*La France c. Commercial Photo Service Inc.* [1980], 1 R.C.S. 536). Le Tribunal se demande donc si les motifs de l'employeur de mettre fin à l'emploi sont liés à la lésion professionnelle ou s'ils constituent une tentative de se soustraire à ses obligations de rengagement, et, par ailleurs, s'ils constituent ses seuls motifs. (Se reporter aux *décisions* n^{os} 716/91I, 296/92I (25 juin 1992), 139/92 (1992), 24 W.C.A.T.R. 113, 704/91 (15 octobre 1992), 233/93 (1993), 28 W.C.A.T.R., et 355/92 (1992), 24 W.C.A.T.R. 184. Même si ces décisions ne sont pas toutes unanimes, les décisions prises à la majorité et les décisions unanimes ont toujours suivi ce raisonnement.)

Le Tribunal a interprété la présomption prévue au paragraphe 54 (10) de la même manière que celle prévue au paragraphe 4 (3), qui s'applique lorsqu'une lésion accidentelle survient au cours ou du fait de l'emploi. On comprend généralement que la présomption prévue au paragraphe 54 (10) ne tient pas s'il existe des preuves claires et convaincantes que la cessation d'emploi s'appuie sur des motifs non liés à l'invalidité indemnisable. (Se reporter aux *décisions* n^{os} 507/92I, 716/91I et 704/91.)

Le Tribunal a dû appliquer les nouvelles dispositions relatives au rengagement à un grand éventail de travailleurs (par exemple, les contractuels engagés à court terme selon des conditions particulières (*décisions* n^{os} 296/92I et 233/93), les travailleurs syndiqués jouissant de droits liés à l'ancienneté (*décision* n^o 173/92 (1992), 24 W.C.A.T.R. 132) et les travailleurs à l'essai (*décision* n^o 704/91), et à toute une gamme de situations (se reporter, par exemple, aux *décisions* n^{os} 335/92 (1992), 25 W.C.A.T.R. 80, et 852/92 (1993), 28 W.C.A.T.R.).

Les cotisations de démerite représentent un autre aspect nouveau des dispositions relatives au rengagement. Lorsqu'il y a manquement à une obligation de rengager, la Loi de 1990 donne à la Commission le pouvoir d'accorder une indemnité au travailleur et d'imposer une pénalité à l'employeur. La politique actuelle de la Commission prévoit l'imposition de la pénalité maximale (qui, selon le paragraphe 54 (13), est l'équivalent des gains moyens nets du travailleur pendant l'année précédente), sauf si l'employeur ne peut rengager le travailleur pour des motifs indépendants de sa volonté (par exemple l'effondrement du marché) ou s'il rengage le travailleur par la suite.

4. à défaut de quoi, recommander au conseil d'administration d'exercer le pouvoir prévu à l'article 93. Au cours de la période visée par le présent rapport, la Commission a bien pris toutes ces mesures, mais le président a l'impression que, depuis environ un an, les deuxième, troisième et quatrième mesures se sont faites rares. Le président est aussi d'opinion que les cadres de la Commission semblent avoir de plus en plus tendance à prendre note des conséquences des décisions du Tribunal sur leurs politiques, puis à les ignorer.

Quand les cadres de la Commission considéraient acceptable ou nécessaire d'ignorer les conflits existant entre les mesures qu'ils prennent et les décisions du Tribunal, les conséquences systémiques qui s'ensuivent sont fort peu différentes de celles découlant du défaut par les membres du conseil d'administration d'exercer le pouvoir dont ils sont investis aux termes de l'article 93.

QUESTIONS EXAMINÉES EN 1992 ET 1993

En 1992 et 1993, le Tribunal a pu étoffer sa jurisprudence en lui apportant un certain nombre de précisions intéressantes. Dans cette partie de mon rapport, je ne peux malheureusement que donner un aperçu des questions juridiques, médicales et de faits qu'il me semble intéressant de souligner. Les questions ne sont pas présentées en ordre d'importance. Certaines ont déjà été relevées tandis que d'autres sont nouvelles.

La Loi sur les accidents du travail a été modifiée plusieurs fois et, durant la période visée par le présent rapport, une loi refondu (le chapitre W.11 des Lois refondues de l'Ontario de 1990) est entrée en vigueur. Pour faciliter la compréhension, la Loi en vigueur actuellement, qui comprend les modifications apportées par le projet de loi 162, est appelée la Loi de 1990. Les versions antérieures de la *Loi sur les accidents du travail* seront appelées la Loi d'avant 1989 et la Loi d'avant 1985.

Rengagement aux termes de la Loi de 1990

Durant la période qui nous occupe, le Tribunal a rendu un certain nombre de décisions portant sur le droit au rengagement découlant des modifications apportées par le projet de loi 162. Auparavant, les employeurs n'étaient pas tenus de rengager les travailleurs blessés. Les nouveaux droits et les nouvelles obligations ne soulevaient pas seulement de nouvelles questions sur le plan de l'interprétation de la loi, elles obligent aussi le Tribunal à étudier des questions plus larges que celles qui se posent dans les cas d'admissibilité habituels. Par exemple, la façon dont un employeur structure son entreprise à la suite de difficultés financières ou l'incidence d'une convention collective peuvent constituer des questions pertinentes lors de l'application des modifications apportées par le projet de loi 162.

Le rapport annuel de 1991 fait état du fait que la Commission a présenté au Tribunal des observations de portée générale dans lesquelles elle donnait son interprétation des dispositions relatives au rengagement à la suite de la *décision n° 372/91* (1991), 19 W.C.A.T.R. 317. Cette décision interprète de façon plutôt stricte l'obligation que la Commission a de communiquer un avis d'aptitude, et elle prévoit que l'obligation de rengagement n'entre en vigueur qu'au moment où l'employeur reçoit un avis en règle. La *décision n° 605/91* (1991), 21 W.C.A.T.R. 131, qui a été la seule à examiner les observations de la Commission en 1991, précise aussi que la Loi oblige la Commission à donner un avis d'aptitude à un employeur avant que l'obligation de rengagement n'entre en vigueur.

Lorsque les politiques ou les méthodes de la Commission entrent en conflit avec des décisions confirmées du Tribunal, l'une des explications possibles, semble-t-il maintenant évident, est que le conseil d'administration n'arrive pas, dans les faits ou implicitement, à s'entendre sur cette question : il ne veut ou, peut-être, ne peut pas soit être en désaccord avec le point de vue du Tribunal, soit modifier la politique ou la méthode concernée de la Commission. En fait, une telle situation peut même devenir monnaie courante compte tenu de la nature de plus en plus partisane, dans les faits, du processus de prise de décisions du conseil d'administration. Bien qu'il s'agisse d'une stratégie douteuse compte tenu des responsabilités des membres du conseil aux termes de la Loi, leur refus d'exercer le pouvoir dont ils sont investis aux termes de l'article 93 est donc, en fait, un moyen concret de limiter les répercussions systémiques d'une interprétation qu'ils ne peuvent, dans le cours normal de leurs travaux, ni modifier.

Toutefois, cette stratégie déséquilibre le système et nuit à son intégrité. En effet, elle crée, et encourage implicitement, l'existence de deux ensembles officiels, mais contradictoires, de droits et d'avantages en matière d'indemnisation des travailleurs. Dans cette situation, l'accès aux avantages spéciaux du deuxième ensemble se limite au groupe d'élite des travailleurs et des employeurs qui sont suffisamment férus en droit pour savoir que les renseignements « officiels » fournis par le personnel de la Commission à l'égard de ces questions ne sont pas en fait déterminants, et qui ont l'endurance et les ressources nécessaires pour soumettre leur cas à la dernière instance d'appel.

Cette stratégie entraîne aussi une multiplication regrettable des appels interjetés à propos de questions courantes. L'exemple de la Colombie-Britannique et du Québec fait ressortir les répercussions possibles de cette situation sur le volume de travail du Tribunal. Dans ces deux provinces, la commission des accidents du travail onet ou refuse depuis longtemps de faire cadrer ses politiques avec les décisions de l'organisme distinct chargé de connaître des appels interjetés contre ses décisions. Conséquence : le nombre des appels y est habituellement beaucoup plus élevé qu'il ne l'est en Ontario.

Les cadres de la Commission ont aussi un rôle important à jouer pour permettre l'harmonisation des politiques de la Commission et des décisions du Tribunal. Ce sont eux, en effet, et non les membres à temps partiel du conseil, qui doivent, avec tout le soin nécessaire, repérer les interprétations du Tribunal qui entrent en conflit avec les politiques ou les méthodes de la Commission et faire en sorte que ces conflits soient résolus en prenant toutes les mesures acceptables à leur disposition. Le conseil d'administration ne pourra s'acquitter de ses responsabilités que si les cadres s'acquittent des leurs.

Entre autres mesures qui permettraient d'assurer une harmonie fondamentale entre les décisions du Tribunal et les politiques et les méthodes de la Commission, citons :

1. Fournir au Tribunal des observations complètes et convaincantes sur les erreurs ou les exemples de mauvaise compréhension constatés dans l'interprétation du Tribunal de sorte que le jury qui sera saisi du prochain cas portant sur une question particulière puisse, grâce à ces observations, en arriver à une conclusion différente;

2. soupeser l'importance de la décision en tenant compte, par exemple, du caractère convaincant de ses motifs, de la mesure dans laquelle elle s'appuie sur d'autres décisions du Tribunal ou de tout autre aspect inhabituel des faits sur lesquels elle se fonde, et décider peut-être d'attendre pour voir si cette décision ne pourrait pas à la longue se révéler n'être qu'une simple anomalie;

3. reconnaître le bien-fondé de la décision du Tribunal et modifier les méthodes concernées ou proposer au conseil d'administration de modifier la politique pertinente;

MODALITÉS D'EXAMEN DES PROJETS DE DÉCISIONS ET INSTITUTIONNALISATION DES DÉCISIONS DU TRIBUNAL

C'est en 1992, par l'arrêt prononcé dans la cause *Tremblay c. Québec (Commission des affaires sociales)* (1992), 1 R.C.S., 952, que la Cour suprême du Canada a manifesté pour la première fois sa désapprobation à l'égard des modalités d'examen des projets de décisions d'un tribunal. Le Tribunal a saisi cette occasion pour étudier ses propres modalités dans le domaine. Il a pu ainsi préciser ces modalités et adopter la version officielle de *Lignes directrices relatives à l'examen des projets de décisions*. Ces lignes directrices, qui décrivent en détail les modalités du Tribunal en la matière, se trouvent à l'annexe A du présent rapport.

En 1992, dans le cadre des conférences spéciales du Barreau du Haut-Canada,¹ le président a pu présenter ses observations sur l'institutionnalisation des décisions de tribunaux et sur la nécessité, pour tout tribunal, de jouer un rôle global efficace dans sa propre jurisprudence. Cette communication intéressera peut-être le lecteur puisqu'elle découle de l'expérience du président au sein du Tribunal et qu'elle expose un point de vue qui a joué un rôle déterminant dans l'évolution des structures du Tribunal.

DÉCISIONS DU TRIBUNAL ET POLITIQUES DE LA COMMISSION

Il y a élargissement de l'écart entre l'interprétation que donne le Tribunal de la Loi sur les accidents du travail et les politiques actuelles de la Commission.

Aux termes de l'article 93 de la Loi, auparavant l'alinéa 86 n), le conseil d'administration de la Commission a le pouvoir et, a-t-on toujours cru², la responsabilité d'étudier l'interprétation confirmée que le Tribunal donne des dispositions de la Loi lorsque cette interprétation contredit des politiques de la Commission. Cette étude doit viser soit à ordonner la rectification de l'interprétation du Tribunal lorsque les administrateurs la considèrent erronée, soit à rendre les politiques de la Commission conformes à cette interprétation lorsque celles-ci leur semblent fondées.

Au cours de la période visée par le présent rapport, toutefois, l'adhésion de la Commission à cette compréhension des responsabilités du conseil d'administration semble s'être affaiblie. Il existe maintenant un certain nombre de questions (dont au moins deux ont une grande importance) à l'égard desquelles le Tribunal a constamment tranché les appels en se fondant sur une interprétation de la Loi qui est en contradiction complète avec la façon dont la Commission applique celle-ci, et ce, sans que les membres du conseil d'administration aient senti le besoin soit d'invoquer l'article 93, soit d'intervenir dans la façon dont la Commission continue d'appliquer la Loi en contravention de cette interprétation.

1 Ellis, «Comments on the Institutionalizing of Tribunal Decisions, *Administrative Law, Principles, Practice and Pluralism*», 1992 LSUC Special Lectures, à la page 357.

2 Voir Weiler, *Reshaping Workers' Compensation for Ontario*, 1980, à la page 116, les procès-verbaux du Comité permanent du développement des ressources, *Hansard Official Report of Debates*, Legislative Assembly of Ontario, Second Session, 33rd Parliament, March 10, 1987, No. R-28, aux pages R-635 à 641; *Deuxième rapport* du Tribunal, 1986-1987, à la page 10; *Review of Decisions No. 915 and 915A* (1990), 15 W.C.A.T.R. 247, aux pages 250 et 252, où le conseil d'administration de la Commission décrit le rôle du Tribunal comme étant le «pouvoir judiciaire du système d'indemnisation des accidents du travail» et qualifie le pouvoir de nature judiciaire du Tribunal dans le cadre des appels d'instance «essentiellement complémentaire» de l'application et de la régie de la Loi par le conseil d'administration.

Ce code tient compte des caractéristiques particulières du Tribunal d'appel et reflète le rôle distinctif joué par les membres dans ses activités d'arbitrage. En outre, il tient compte de l'expérience que le président et les membres ont acquise depuis la création du Tribunal en matière de responsabilités professionnelles. Le préambule du code comprend la description détaillée du contexte dans lequel il a été élaboré.

On a intégré au code une grande partie des lignes directrices sur les conflits d'intérêts que le Tribunal avait adoptées en 1986. On a toutefois élargi la portée de façon à traiter de questions particulièrement difficiles qui ont fait l'objet de discussions récentes tant au Tribunal que parmi les groupes de travailleurs et d'employeurs (par exemple, la nature des activités permises à l'extérieur du Tribunal).

Il sera possible de se procurer le code d'éthique professionnelle auprès du Service de l'information.

POLITIQUE DU TRIBUNAL SUR LE HARCELEMENT

Après de longues discussions menées au sein du Tribunal, ce dernier a adopté, en mars 1992, une politique officielle sur le harcèlement. Cette politique prévoit des marches à suivre aux fins du dépôt des plaintes et de l'exécution des enquêtes. Cette politique suit de près la politique correspondante en vigueur au sein de la fonction publique.

ACCREDITATION SYNDICALE

Le 9 décembre 1992, le Tribunal a appris que la section 527 du Syndicat des employés de la fonction publique de l'Ontario a été accréditée comme agent de négociation de son personnel. Le Tribunal et le syndicat ont mené des négociations pour préciser divers aspects des dispositions relatives au contrat social et pour conclure une première convention collective. À la fin de la période visée par le présent rapport, cette première convention était encore en cours de négociation.

PRÉSIDENTE SUPPLÉANTE

Le poste de président suppléant du Tribunal est un élément important de sa structure organisationnelle. En fait, le président et le président suppléant se partagent les responsabilités administratives de la présidence du Tribunal un peu comme le feraient des associés.

Depuis sa création, le Tribunal a pu profiter des compétences d'une succession de personnes solides et capables : M. Jim Thomas, M^{me} Laura Bradbury et M^{me} Maureen Kenny.

Au cours de l'été de 1993, M^{me} Kenny a décidé de revenir aux fonctions purement arbitrales de vice-présidente. M^{me} Zeynep Oren, qui est l'une des vice-présidents les plus expérimentées du Tribunal et une ancienne avocate du Bureau des conseillers juridiques du Tribunal, a accepté d'occuper le poste de président suppléant à compter du 1^{er} août 1993.

Le poste de président suppléant continue donc d'être occupé par une personne aux très fortes capacités de direction.

3. L'accord précise l'ordre à suivre dans l'application des diverses mesures de réduction des coûts à savoir : d'abord les économies résultant d'une amélioration de la productivité, ensuite le congés non payés et, en dernier recours seulement, les mises à pied.

4. L'accord confirme qu'il revient entièrement à la direction de relever et de quantifier le économies résultant de l'amélioration de la productivité qui peuvent être utilisées pour atteindre les objectifs de réduction des dépenses. La direction a toutefois l'obligation d'participer à un processus de consultation structurée avec le syndicat et les employés pour syndiqués et de fournir l'information financière permettant de rendre ces consultations utiles.

5. L'accord exige la création d'un comité mixte pour les consultations entre l'employeur, le syndicat et le personnel des unités de négociation.

À la suite de la signature de l'accord cadre, un « accord local » a été négocié avec le SEFPO, et on a élaboré et affiché un plan local pour les membres non syndiqués.

L'objectif de réduction des dépenses du Tribunal est de 327 700 \$.

Tout au cours du processus de négociation, le Tribunal avait supposé qu'il pouvait traiter, au fins du contrat social, les membres nommés par décret comme des employés du Tribunal. Cependant, en août, le Tribunal a été informé que toutes les personnes nommées par décret dans l'ensemble du gouvernement faisaient partie d'un seul groupe, qu'elles étaient désignées, aux fins du contrat social, comme des employés du ministère des Finances et qu'elles étaient soumises à l'accord du secteur de la fonction publique. En conséquence, dans les accords liés au contrat social, les membres du Tribunal et le personnel n'ont pas à répondre aux mêmes exigences. Ainsi les congés non payés des membres sont déterminés sans que l'on tienne compte de la situation particulière du Tribunal.

Au moment de la rédaction du présent rapport, il semble que pendant la première année de contrat social (qui se termine en mars 1994), les membres nommés par décret devront prendre 10 congés non payés. Par contre, il semble que le personnel du Tribunal devra seulement prendre de quatre à six congés non payés une fois qu'on aura tenu compte des économies résultant d'une amélioration de la productivité.

Pour permettre au personnel de prendre ses congés non payés et pour réduire au minimum les répercussions sur les audiences, le Tribunal a fermé ses bureaux pendant trois jours durant la période des fêtes de 1993. Les employés et les membres prendront leurs autres congés non payés individuellement au moment de leur choix. Le Tribunal s'efforce d'accorder les congés non payés sans avoir à réduire le nombre d'audiences inscrites au calendrier.

CODE D'ÉTHIQUE PROFESSIONNELLE DES MEMBRES

En avril 1993, après un processus d'élaboration et de consultations internes et externes qui a duré un an, le Tribunal d'appel des accidents du travail a adopté un nouveau code d'éthique professionnelle destiné à ses membres.

Le code en question s'applique à tous les membres du Tribunal : président, vice-présidents et membres représentants, à plein temps et à temps partiel. Il définit les obligations et les restrictions professionnelles qui découlent implicitement du rôle des membres au Tribunal.

Locaux

Le Tribunal éprouve un grave manque de locaux. À la fin de 1992, il avait obtenu l'autorisation du ministère du Travail et du Conseil de gestion d'installer des bureaux dans des locaux contigus devenus vacants dans l'immeuble où il est actuellement situé. Cependant, avant que l'on puisse parachever le contrat de location, le gouvernement a annoncé un gel de toutes les dépenses non engagées pour 1993 dans la fonction publique. Afin de respecter l'esprit de cette directive, et vu les fortes compressions budgétaires en général, le Tribunal a décidé qu'il valait mieux remettre à plus tard l'agrandissement de ses locaux et les dépenses qui en découleront.

Comme le personnel du Tribunal continue à user d'imagination et à trouver moyen d'utiliser le moindre recoin disponible, la situation est supportable pour le moment. Il arrivera cependant un moment où l'exiguïté des locaux commencera à influencer trop négativement sur le travail du Tribunal et contribuera dans une trop large mesure au stress des membres et du personnel. La situation en est presque là et c'est pourquoi le Tribunal examinera en 1994 de nouvelles solutions à son problème de locaux.

On s'attend à ce que l'effet combiné de l'augmentation du nombre de cas à traiter et du manque de locaux entraîne pour la première fois en 1994 un manque de salles d'audience. À court terme, le Tribunal prévoit de remédier à ce manque en concluant des accords spéciaux en vue d'utiliser les salles d'audience ou les salles de réunion d'établissements gouvernementaux ou d'immuebles d'autres organismes situés à proximité.

Remise à plus tard de la deuxième étape du système automatisé de suivi des cas

En accord avec le gel des dépenses non engagées imposé par le gouvernement, le Tribunal a aussi remis à plus tard la mise en oeuvre de la deuxième étape du système automatisé de suivi des cas.

Mesures prises dans le cadre du contrat social

Après avoir été d'abord assigné (tout comme la CAT) au secteur principal des organismes et des commissions, le Tribunal a fini par être assigné à un sous-secteur comprenant quatre autres organismes : le Musée des beaux-arts de l'Ontario, le Musée royal de l'Ontario, la Commission du Régime de retraite de l'Ontario et la Commission des parcs du Niagara. Le dénominateur commun à ces organismes était que chacun avait des unités de négociation représentées par le Syndicat des employés de la fonction publique de l'Ontario (SEFPO).

De longues négociations menées sur plusieurs jours en juillet 1993 ont permis de conclure un accord cadre auquel ont souscrit les syndicats, les cinq organismes et le gouvernement.

Voici les principaux éléments de cet accord :

1. L'accord a été accepté par le ministre des Finances, ce qui a permis au Tribunal d'échapper aux obligations plus coûteuses qui, aux termes de la *Loi sur le contrat social*, devaient être imposées en cas d'échec des négociations.

2. L'accord permet de répondre aux objectifs de réduction des dépenses en utilisant 100 pour 100 des économies résultant d'une amélioration de la productivité (par comparaison, l'accord du secteur de la fonction publique de l'Ontario prévoit que seulement 50 pour 100 de ces économies peuvent être utilisées à cette fin).

En outre, on tient aussi des conférences préparatoires pour les audiences devant se tenir à Toronto lorsque le Bureau des conseillers juridiques du Tribunal reçoit un cas qui semble comporter des difficultés particulières sur le plan des questions en litige ou de la preuve. Cependant, pour les audiences de Toronto, les besoins ne sont pas aussi pressants, car les bureaux du Tribunal se trouvent dans cette ville et les membres du jury ainsi que les parties et leurs représentants vivent habituellement dans les environs. Dans ces circonstances, si un problème survient au cours de la première journée d'audience, il est possible de transformer l'audience en une conférence préparatoire sans entraîner de coûts supplémentaires.

Modification de la présentation de descriptions de cas

En 1993, le Tribunal a commencé à mettre à l'essai des présentations simplifiées pour les descriptions de cas produites aux fins de certaines catégories de cas.

Moyens visant à réduire le temps nécessaire à la rédaction des décisions

Maintenant qu'il possède une vaste expérience en la matière, le Tribunal a décidé de réexaminer le problème de la rédaction des décisions pour voir si l'on ne pourrait pas trouver des moyens de réduire le temps et les ressources nécessaires à cette partie de son travail. Le Tribunal demeure toutefois déterminé à maintenir la qualité des décisions et des motifs fournis.

Des discussions internes à ce sujet ont jusqu'ici permis de relever un certain nombre de possibilités.

Par exemple, on commence à se demander si l'on pourrait, ou s'il serait approprié pour certains types de cas, de fournir des motifs principalement à l'intention des parties qui n'ont pas obtenu gain de cause, plutôt que pour l'ensemble des groupes auxquels nos motifs sont présentement destinés. On pourrait ainsi réduire la partie des décisions consacrée à la description et à l'histoire du cas (de toute façon, les parties connaissent bien la nature du cas) et axer principalement les motifs sur les questions qui importaient aux parties et au sujet desquelles le jury a manifesté son désaccord.

Ainsi rédigés, les motifs seraient d'une utilité limitée pour les parties présentant un appel à l'avenir et ils contribueraient probablement peu à l'ensemble des connaissances accumulées par le Tribunal sur les questions dont il est saisi. En outre, ils pourraient présenter un certain problème pour le Tribunal au moment de traiter les demandes de réexamen ou de répondre aux plaintes faites à l'ombudsman. Cependant, la rédaction de décisions comportant ce genre de motifs exigerait moins de temps et répondrait tout de même aux besoins essentiels des parties.

Par ailleurs, le Tribunal a convenu que, quand un jury considère comme convaincante l'analyse d'un commissaire d'audience sur une question particulière, il est raisonnable et approprié d'adopter cette analyse en y faisant référence dans les motifs de la décision et de passer aux autres questions.

En 1994, le Tribunal entend aussi examiner s'il serait possible de concevoir une présentation plus efficace pour les décisions rendues dans certains types de cas.

Toutes ces questions continueront de faire l'objet de discussions avec le Groupe consultatif du Tribunal.

Modification de la méthode d'établissement du calendrier des audiences

Le Service de l'inscription des cas au calendrier des audiences (SICCA) a été le premier service du Tribunal à être surchargé de travail en raison du nombre accru de cas à traiter. À la suite d'un examen effectué par l'administratrice des appels, le Tribunal a jugé qu'il ne pouvait plus se permettre de négocier toutes les dates d'audience avec les parties.

Ainsi, en novembre 1993, le Tribunal a mis à l'essai une nouvelle méthode d'établissement du calendrier des audiences. Le Service de réception des nouveaux dossiers choisit d'abord unilatéralement une date d'audience (à partir d'un choix de dates fourni par le SICCA). Il communiquait ensuite cette date aux représentants et aux parties au moment de l'envoi de la description de cas. (Habituellement, la date choisie se situe quatre mois plus tard.) Les parties ou les représentants ont la possibilité d'informer le Tribunal que la date choisie ne leur convient pas. Dans de tels cas, le SICCA négocie une date d'audience spéciale avec les parties. Cette nouvelle formule oblige donc les représentants des parties à refuser, plutôt qu'à accepter, une date proposée et, le cas échéant, à expliquer ensuite leur refus à leur client. Jusqu'à maintenant, il semble que cette nouvelle méthode pourrait réduire considérablement le volume de travail du SICCA.

Retrait des appels

On encourage le personnel du Tribunal à proposer aux parties ou à leurs représentants de retirer les cas qui ne semblent pas prêts à être entendus en audience. Naturellement, le Tribunal ne fait ainsi que remettre le travail à plus tard. Cependant, en éliminant complètement du processus de traitement les cas présentés prématurément, on évite au personnel de travailler inutilement ou d'avoir à faire deux fois le même travail. Évidemment, lorsqu'une partie n'a pas de représentant, il faut prendre garde de lui proposer de retirer son appel s'il est probable que cela ne changera rien. Afin de repérer ces cas le plus tôt possible, le Tribunal a récemment commencé à examiner la possibilité de modifier son formulaire de demande d'audience de façon à inviter les demandeurs à indiquer, à leur manière, pourquoi ils pensent que la décision de la Commission est erronée.

Consultations préparatoires pour les audiences tenues à l'extérieur de Toronto

Le Tribunal devait ajourner un nombre disproportionné d'audiences à l'extérieur de Toronto après que les membres des jurys s'étaient déjà rendus dans les localités où elles devaient se tenir. Afin de réduire au minimum ce genre d'événements inattendus le jour de l'audience, le Tribunal a commencé à tenir des conférences téléphoniques préparatoires entre le jury et les parties et leurs représentants. Au cours de ces conférences, les participants s'entendent sur les questions en litige et sur les questions relatives à la preuve de façon que chacun soit prêt et sache à quoi s'en tenir au moment où l'audience est convoquée.

Production interne du W.C.A.T. Reporter

En 1993, le Tribunal a mis fin à son contrat de publication avec la firme Carswell et a commencé à produire le recueil d'arrêtés W.C.A.T. Reporter. La présentation du *Reporter* sera la même, si ce n'est de l'absence du nom de la firme Carswell; cependant, toute la production sera réalisée par la Section des publications, exception faite de l'impression comme telle. Le volume 28, qui paraîtra en avril 1994, sera le premier volume produit de cette façon. Cette façon de procéder permettra de réduire considérablement les coûts de production du *Reporter*.

Augmentation des frais d'abonnement

Le Tribunal a décidé d'augmenter, sur une période de trois ans, les frais d'abonnement à ses publications. Il compte ainsi en venir à pouvoir recouvrer entièrement ses coûts de publication.

Sténographes judiciaires

Le Tribunal a décidé d'éliminer, à l'essai, les services de sténographie judiciaire pour la plupart des audiences tenues dans ses bureaux de Toronto. Les sténographes judiciaires seront remplacés par des magnétophones dont s'occuperont les membres des jurys. À la fin de 1993, on parachevait l'organisation de ce nouveau système. On s'attend à ce que l'enregistrement des premières audiences commence au début de 1994. Si ce système fonctionne bien à Toronto, le Tribunal prévoit de l'utiliser aussi pour les audiences qui ont lieu à l'extérieur de Toronto. Il est difficile d'évaluer avec précision les économies que cette mesure permettra de réaliser, mais elles seront probablement considérables.

Transcriptions des audiences de la CAT

En juillet 1993, le Tribunal a mis fin à sa pratique de longue date consistant à demander automatiquement pour chaque appel la transcription des audiences des commissaires d'audience de la CAT. On commande maintenant seulement les transcriptions dont on a besoin. L'abandon de cette pratique permettra de réaliser des économies considérables en 1994.

Réduction des dépenses en matière de fournitures et de matériel de bureau

En 1991, le Tribunal a été libéré de l'obligation de passer par des fournisseurs centraux établis par le gouvernement pour se procurer certaines catégories de fournitures. Le Tribunal a voulu tirer profit au maximum de cet assouplissement. Ainsi, en 1992 et 1993, la directrice de l'Administration et son personnel ont procédé à une recherche systématique de fournisseurs offrant des prix concurrentiels et on a fait des efforts accrus pour réduire au minimum les dépenses et réaliser des économies. Ces mesures ont permis au Tribunal de réduire considérablement ses dépenses en matière de fournitures et de matériel.

Le facteur principal de cette complexité est la nature des questions découlant de la réforme apportée par le projet de loi 162. À cet égard, les cas de renvoi sont tout particulièrement difficiles. La complexité accrue des cas se manifeste dans les données statistiques du Tribunal sous diverses formes : augmentation du nombre moyen d'audiences nécessaires pour régler un cas, plus grand nombre de jours requis pour certaines audiences, pourcentage plus élevé de cas nécessitant des travaux après l'audience et prolongation du processus décisionnel en général.

Réponse du Tribunal au problème lié au volume de travail

Étant donné l'augmentation du nombre de demandes que le Tribunal reçoit actuellement et la forte probabilité d'augmentations beaucoup plus marquées à venir, il était évident que les soumissions budgétaires postérieures à 1993 ne pouvaient être fondées sur l'approche habituelle. Le Tribunal se trouve à un nouveau point de départ et, selon le président, il lui faudra prendre des mesures différentes.

Il reste cependant qu'on ne peut évaluer avec certitude les répercussions véritables et définitives des faits susmentionnés sur le nombre de cas à traiter par le Tribunal. En outre, en cette période de fortes restrictions financières, le président croit que la seule stratégie possible en la matière consiste à s'occuper des problèmes à mesure qu'ils se manifestent. Cette stratégie suppose implicitement des périodes de transition au cours desquelles la capacité du Tribunal sera dépassée par l'augmentation rapide du nombre de cas à traiter. Pendant ces périodes de transition, le traitement des cas subira peut-être des retards qui seraient jugés inacceptables en d'autres circonstances. Cependant, le président croit qu'il s'agit là d'une conséquence logique de la gestion financière prudente qu'il faut adopter en cette période marquée par d'inévitables restrictions financières.

Le président du Tribunal croit par conséquent qu'il faut régler par étapes le problème de l'augmentation du nombre de cas. Ainsi, pour 1994, le président proposera une augmentation budgétaire relativement modeste. Cette augmentation devrait permettre au Tribunal de faire face au nombre élevé de cas qui lui parviennent déjà tout en maintenant dans des limites acceptables les retards supplémentaires qui se produiront. Cependant, le président note qu'il pourrait être nécessaire de prendre des mesures plus radicales, et ce, peut-être même avant la fin de 1994.

LE RENDEMENT DU TRIBUNAL EN MATIÈRE DE COMPRESSIONS

Il importe de rendre compte des mesures prises par le Tribunal pour faire face à la situation en cette période sans précédent de restrictions financières et de réductions radicales des budgets de la fonction publique. Le lecteur trouvera ci-dessous la liste des principales mesures adoptées, pour la plupart en 1993.

Nouveau mode d'accès du public à la base de données sur les décisions

La base de données en texte intégral du Tribunal avait jusqu'à maintenant été une base de données personnalisée offerte et tenue à jour par le service *Infomart* de la société Southam. En 1993, le Tribunal a conclu un contrat avec la société Southam afin d'intégrer la base de données à son service commercial *Infomart On-line*, pour ainsi éliminer les frais annuels considérables qu'il devait payer pour la base de données personnalisée.

3. Il est généralement admis que l'un des facteurs qui déterminent le nombre de cas à traiter au Tribunal est depuis toujours les ressources limitées mises à la disposition des parties pour leur défense. Ainsi, il y a toujours eu une certaine proportion de cas qui ont été arrêtés avant de parvenir au Tribunal parce qu'ils devaient être placés sur les listes d'attente des organismes qui offrent les services de conseillers spécialisés dans le domaine. À cet égard, quatre faits notables auront des répercussions importantes (du moins, dans un proche avenir) sur le nombre de cas à traiter par le Tribunal.

Premièrement, la Fédération du travail de l'Ontario (FTO) a commencé à offrir un important programme de formation destiné aux conseillers dans le domaine des accidents du travail. Le programme dispose d'un personnel à plein temps, d'un budget de 700 000 \$ ainsi que du soutien de divers syndicats. Jusqu'à maintenant, les cours réguliers, qui ont commencé en février 1991, ont permis à 375 membres de syndicats de terminer le troisième niveau de formation. Quatre-vingt-quinze pour cent de ces membres sont maintenant prêts à agir à titre de conseillers dans le domaine des accidents du travail.

On peut s'attendre à ce que la formation de nouveaux conseillers par la FTO ait une incidence directe sur le nombre de demandes reçues par le Tribunal. En effet, les appels qui étaient auparavant en attente en raison de l'arrière causé par l'insuffisance des ressources pourront maintenant être pris en charge par ces nouveaux conseillers. Par exemple, grâce à l'aide de la FTO, le Bureau des conseillers des travailleurs (BCT) renvoie maintenant tous les cas de travailleurs accidentés syndiqués aux conseillers des syndicats.

Deuxièmement, en raison du nombre extraordinairement élevé de demandes, le BCT s'est vu accorder par le Conseil du Trésor une augmentation de son budget annuel en 1993, décision sans précédent en cette période de compressions budgétaires.

Troisièmement, cette augmentation comprenait 450 000 \$ destinés au financement de base de groupes de travailleurs accidentés non syndiqués. On peut s'attendre à ce que ce financement de base serve à créer d'autres ressources pour la défense des travailleurs et à sensibiliser davantage les travailleurs non syndiqués à leurs droits d'appel.

Quatrièmement, le Tribunal a appris que, à compter de 1994, le BCT mettra en oeuvre une nouvelle stratégie consistant à n'accepter que les cas dont il peut s'occuper dans un délai acceptable. Le BCT compte ainsi réduire ses listes d'attente (qui, dans certains bureaux, sont de 28 mois). En outre, il encouragera et aidera les travailleurs qui ne peuvent être représentés à défendre eux-mêmes leur appel.

Il est impossible de prévoir toutes les répercussions que ce changement de la politique du BCT aura sur le Tribunal. Cependant, il faut s'attendre à ce qu'une proportion importante des cas faisant actuellement partie de l'arrière parviendra au Tribunal plus rapidement que si la politique n'avait pas été modifiée. En outre, nombre de ces cas risquent d'entraîner plus de complications en raison de l'absence d'un représentant professionnel.

Complexité accrue

Le problème lié au volume de travail dans le système d'appel en général, et au Tribunal en particulier, n'est pas seulement une conséquence du plus grand nombre de cas. En effet, le Tribunal fait aussi face à une augmentation notable du degré de complexité des cas portés en appel.

5. Divers indicateurs permettent de constater les répercussions qu'a eues sur le Tribunal l'augmentation du nombre de cas à traiter observée jusqu'ici. Le nombre total de cas en cours de traitement au Tribunal — c'est-à-dire le nombre de cas qui en sont aux diverses étapes du processus, depuis la réception jusqu'à la fermeture des dossiers — était de 1 320 à la fin de 1991, et de 1 700 à la fin de 1993 (soit une augmentation de 28,5 pour 100). À la fin de 1991, il y avait 525 cas qui en étaient à l'étape de la rédaction de la décision ou qui faisaient l'objet de travaux postérieurs à l'audience; par comparaison, il y en avait 650 à la fin de 1993 (soit une augmentation de 24 pour 100).
6. Le Tribunal ne possède pas actuellement d'arrêté au sens où un certain nombre de cas ne seraient pas en cours de traitement. Toutefois, le travail supplémentaire exigé par le plus grand nombre de cas à traiter (par exemple, le volume de travail individuel des employés du Bureau des conseillers juridiques du Tribunal est de 30 à 40 pour 100 supérieur à ce qu'il était il y a deux ans) entraîne un ralentissement général du processus de traitement. Les cas pour lesquels une décision définitive avait été rendue à la fin de 1993 avaient passé en moyenne 20 pour 100 plus de temps au Tribunal que les cas pour lesquels une décision définitive avait été rendue à la fin de 1992.

Prévisions du nombre de cas à traiter

La tendance qui ressort de ces données ne représente que le début d'une situation qui pourrait mener le Tribunal à un état de crise grave en matière de traitement des cas. Cela est évident si l'on tient compte d'un certain nombre de faits susceptibles de provoquer une augmentation encore plus élevée du nombre de demandes en 1994 et par la suite. Ces faits sont décrits ci-dessous :

1. En 1993, les activités d'arbitrage de la Commission ont fait un bond. En effet, en 1993, la Direction de la révision des décisions (DRD) a rendu *deux fois* plus de décisions qu'elle le fait habituellement. De plus, le nombre d'appels interjetés devant un commissaire d'audience ou la Direction du renvoi a été supérieur de 65 pour 100 au nombre habituel, ce qui laisse prévoir un nombre exceptionnellement élevé de décisions en 1994.

(Il y a des raisons de penser que cette augmentation sera de courte durée, car elle reflète les efforts de la Commission en vue de réduire un arriéré devenu inacceptable à la DRD et elle se produit à un moment où le nombre de demandes adressées à la Commission ne cesse de diminuer. Cependant, le profil des appels interjetés à la suite de l'adoption du projet de loi 162 [lequel prévoit des indemnités pour perte de salaire, des suppléments ainsi que des indemnités pour perte non économique] n'a pas encore été établi et il est possible que le nombre d'appels par cas augmente considérablement par rapport à la situation d'avant 1989. En outre, en raison des nouvelles ressources mises à la disposition des parties pour leur défense [voir ci-dessous] et du nombre croissant de cas où la Commission continue d'appliquer des interprétations de la Loi dont on sait qu'elles seront rejetées par le Tribunal [voir ci-dessous aussi], on peut s'attendre à une augmentation du nombre de décisions portées en appel.)

2. Les cas dont le Tribunal est saisi découlent en majeure partie des décisions rendues par les commissaires d'audience et par la Direction du renvoi. Toutefois, en raison du temps qui s'écoule généralement avant que ces décisions soient portées en appel devant le Tribunal, on pourrait penser que le nombre de demandes reçues par le Tribunal en 1993 n'est pas vraiment représentatif de l'augmentation du nombre de décisions rendues par la Commission au cours de cette même année. L'effet de cette augmentation devrait plutôt se faire sentir en 1994 et 1995.

Figure 1 -- GRAPHIQUE COMPARATIF DES TENDANCES

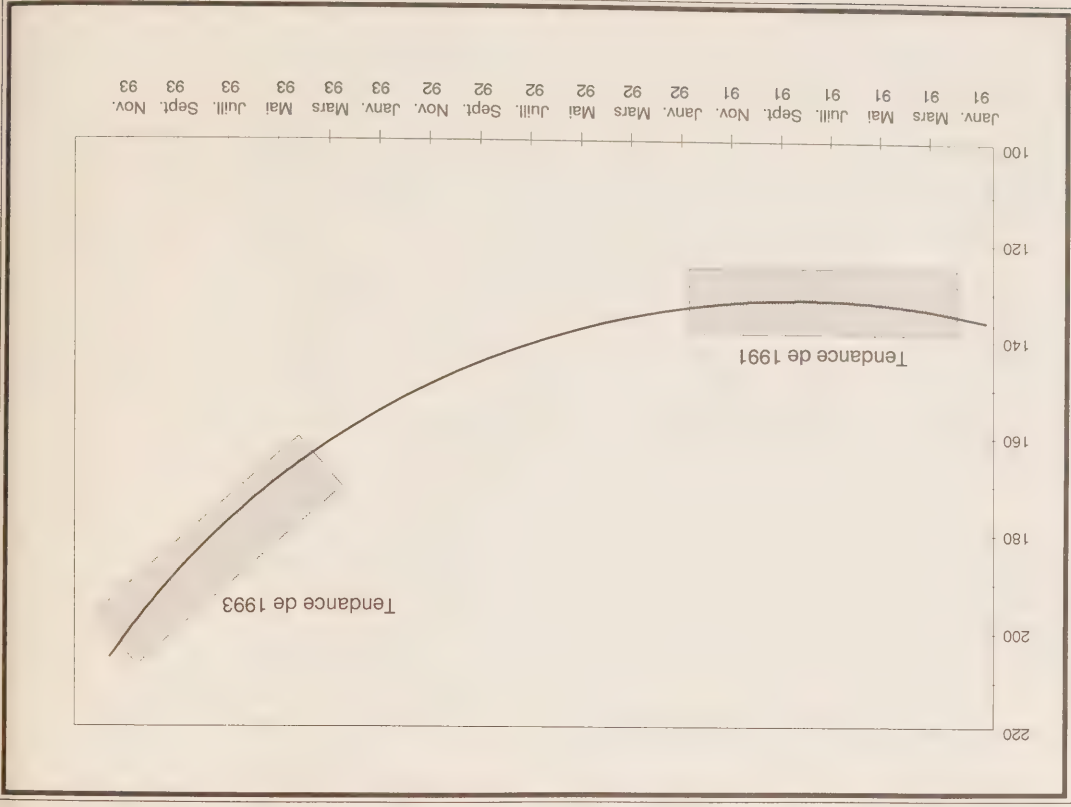


Tableau I -- DEMANDES REÇUES PAR MOIS

Demandes reçues			
	1991	1992	1993
Janvier	132	111	135
Février	110	235	168
Mars	101	152	204
Avril	140	129	157
Mai	157	148	195
Juin	135	162	200
Juillet	182	162	188
Août	116	134	183
Septembre	114	144	168
Octobre	139	137	173
Novembre	117	145	194
Décembre	117	145	185
TOTAL	1 560	1 804	2 150
(Moyenne)	130	150	179

RAPPORT DU PRÉSIDENT DU TRIBUNAL

LE RENDEMENT DU TRIBUNAL

Au cours des années 1992 et 1993, les procédures et les méthodes du Tribunal ont continué de recevoir l'approbation générale. En outre, le Tribunal a respecté les budgets autorisés et, en cette période de fortes restrictions financières, il a su répondre aux pressions implicites exercées sur lui en ce domaine. Le Tribunal a aussi continué de rendre des décisions d'excellente qualité. Cependant, le nombre de cas dont le Tribunal est saisi augmente à un point tel qu'il a commencé à enregistrer une prolongation du temps de traitement des cas.

L'augmentation du nombre de cas à traiter entraîne déjà des problèmes et est susceptible d'occasionner de graves difficultés dans un proche avenir (en particulier en cette période marquée par de fortes restrictions financières). Il importe donc que le ministre et les groupes intéressés au Tribunal soient au courant de la nature et des causes prévisibles de ce qui deviendra probablement bientôt une situation de crise en matière de traitement des cas.

LE PROBLÈME DE L'AUGMENTATION DU NOMBRE DE CAS À TRAITER

Nombre actuel de cas à traiter

Les principaux facteurs de l'augmentation du nombre de cas à traiter observée à la fin de 1993 sont décrits ci-dessous.

1. De 1988 jusqu'à la fin de 1991, le nombre de demandes reçues au Tribunal est demeuré stable (environ 1 500 à 1 600 demandes par année). On prévoyait que les modifications importantes apportées en 1989 à la *Loi sur les accidents du travail* (projet de loi 162) entraîneraient une augmentation du nombre d'appels, mais, à la fin de 1991 (année visée par le rapport annuel précédent), cette augmentation ne s'était pas encore produite. Les répercussions de ces modifications ont commencé à se faire sentir en 1992 et 1993.
2. Le nombre total de demandes reçues par le Tribunal a ainsi été supérieur de 36 pour 100 au nombre de demandes auquel on en était venu à s'attendre en 1991.

3. Le lecteur trouvera ci-joint un tableau indiquant le nombre de demandes reçues mensuellement en 1991, 1992 et 1993 ainsi qu'un graphique comparatif des lignes de tendance pour 1991 et 1993 (tableau 1 et figure 1, p. 2). En examinant ces données, on peut constater que la tendance est à la hausse et on a toutes les raisons de penser que cette tendance n'est que le signe avant-coureur d'augmentations beaucoup plus élevées.

4. En projetant la ligne de tendance de 1993 jusqu'à la fin de 1994, c'est-à-dire si on suppose que le *taux* d'augmentation sera le même en 1994 qu'en 1993, on constate que le Tribunal devrait recevoir 2 532 demandes en 1994, soit une augmentation de 62 pour 100 par rapport à 1991. En outre, si le taux d'augmentation s'accroît, comme semble le laisser présager l'analyse des facteurs extérieurs décrits ci-dessous, le Tribunal pourrait bien recevoir en 1994 le double des demandes reçues en 1991.

INTRODUCTION

Le Tribunal d'appel des accidents du travail est un tribunal tripartite qui a été institué en 1985 pour entendre les appels interjetés contre les décisions de la Commission des accidents du travail. Le Tribunal est un organisme de nature judiciaire distinct et indépendant de la Commission.

Le présent rapport, qui renferme le rapport annuel du président du Tribunal et celui du Tribunal, est publié à l'intention du ministre du Travail et des différents groupes intéressés au Tribunal. Le lecteur y trouvera une vue d'ensemble du fonctionnement du Tribunal pendant la période visée ainsi qu'un examen de certaines questions susceptibles de présenter un intérêt particulier pour le ministre et les groupes intéressés. Ce rapport porte sur la période de deux ans allant du 1^{er} janvier 1992 au 31 décembre 1993.

Il va sans dire qu'un «rapport annuel» portant sur une période de deux ans est une nouveauté. Le Tribunal a décidé de recourir à ce mode de compte rendu en considération de questions d'opportunité et de coûts. La rédaction et la production du rapport annuel ont toujours constitué un fardeau considérable pour les ressources administratives du Tribunal et, en 1993, ces ressources faisaient l'objet d'une demande particulièrement forte. Quand la production du rapport annuel de 1992 a pris un retard tel que ce rapport n'aurait été prêt qu'en septembre ou octobre 1993, il a semblé sage du point de vue de l'utilisation des ressources et de celui des coûts de combiner le rapport de 1992 à celui de 1993.

Ce rapport comprend en fait le rapport annuel du président ainsi que celui du Tribunal. Dans son rapport, le président exprime ses observations, ses vues et ses opinions personnelles. Le rapport du Tribunal comprend un aperçu des diverses activités du Tribunal et de sa situation financière ainsi que des modifications apportées à ses règles et procédés administratifs.

LE RAPPORT DU TRIBUNAL

LA PROCÉDURE D'APPEL

VICE-PRÉSIDENTS, MEMBRES ET PERSONNEL CADRE

BUREAU DES CONSEILLERS JURIDIQUES DU TRIBUNAL

Service de réception des nouveaux dossiers

Rédacteurs de descriptions de cas

Travailleurs juridiques, étape préalable à l'audience

Avocats

Travailleurs juridiques, étape postérieure à l'audience

Bureau de liaison médicale

SERVICE DE L'INFORMATION

Bibliothèque

Section des publications

SERVICE DE L'INFORMATIQUE

Nouveau système informatique

Système automatisé de suivi des cas

Autres applications exploitées sur les ordinateurs personnels

Directives sur la sécurité informatique

Service de dépannage

Rendement du mini-ordinateur

Matériel spécial pour des membres handicapés

SOMMAIRE DES STATISTIQUES

Nombre de demandes reçues

Cas réglés

Nombre de cas en cours de traitement

Temps de traitement

Audiences et décisions

QUESTIONS FINANCIÈRES

ANNEXE A

LIGNES DIRECTRICES RELATIVES À L'EXAMEN DES PROJETS DE DÉCISIONS

ANNEXE B

VICE-PRÉSIDENTS ET MEMBRES EN 1992 ET 1993

VICE-PRÉSIDENTS ET MEMBRES --- RENOUELLEMENTS DE MANDATS

VICE-PRÉSIDENTS ET MEMBRES --- EXPIRATIONS DE MANDATS ET DÉMISSIONS

NOMINATIONS EN 1992 ET 1993

CADRES SUPÉRIEURS

CONSEILLERS MÉDICAUX

ANNEXE C

RAPPORTS DES VÉRIFICATEURS ET ÉTATS FINANCIERS

Table des matières

V	INTRODUCTION
I	RAPPORT DU PRÉSIDENT DU TRIBUNAL
I	LE RENDEMENT DU TRIBUNAL
I	LE PROBLÈME DE L'AUGMENTATION DU NOMBRE DE CAS À TRAITER
I	Nombre actuel de cas à traiter
1	Prévisions du nombre de cas à traiter
3	Complexité accrue
4	Réponse du Tribunal au problème lié au volume de travail
5	LE RENDEMENT DU TRIBUNAL EN MATIÈRE DE COMPRESSIONS
5	Nouveau mode d'accès du public à la base de données sur les décisions
5	Production interne du W.C.A.T. Reporter
6	Augmentation des frais d'abonnement
6	Sténographes judiciaires
6	Transcriptions des audiences de la CAT
6	Réduction des dépenses en matière de fournitures et de matériel de bureau
7	Modification de la méthode d'établissement du calendrier des audiences
7	Retrait des appels
7	Consultations préparatoires pour les audiences tenues à l'extérieur de Toronto
8	Modification de la présentation des descriptions de cas
8	Moyens visant à réduire le temps nécessaire à la rédaction des décisions
9	Locaux
9	Remise à plus tard de la deuxième étape du système automatisé de suivi des cas
9	Mesures prises dans le cadre du contrat social
10	CODE D'ÉTHIQUE PROFESSIONNELLE DES MEMBRES
11	POLITIQUE DU TRIBUNAL SUR LE HARCELEMENT
11	ACCREDITATION SYNDICALE
11	PRÉSIDENTE SUPPLÉANTE
11	MODALITÉS D'EXAMEN DES PROJETS DE DÉCISIONS ET INSTITUTIONNALISATION
12	DES DÉCISIONS DU TRIBUNAL
12	DÉCISIONS DU TRIBUNAL ET POLITIQUES DE LA COMMISSION
14	QUESTIONS EXAMINÉES EN 1992 ET 1993
14	Rengagement aux termes de la Loi de 1990
16	Avantages rattachés à l'emploi aux termes de la Loi de 1990
16	Réadaptation professionnelle
17	Stress professionnel
18	Maladies professionnelles
20	Tarification par incidence
20	Employeurs associés
20	Douleur chronique et fibromyalgie
22	La Charte canadienne des droits
23	Autres questions
23	RÉVISIONS JUDICIAIRES
24	Autre instance

**RAPPORT ANNUEL
DE 1992 ET 1993**

Tribunal d'appel des accidents du travail (Ontario)

505, avenue University
7^e étage

Toronto (Ontario)

M5G 1X4

ISSN: 1181-6031

© 1994

RAPPORT ANNUEL DE 1992 ET 1993

Tribunal d'appel des accidents du travail
Workers' Compensation Appeals Tribunal



431000029

JUL 6 1994

